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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1947

No. 134

REPUBLIC NATURAL GAS COMPANY,
Appellant,

vs.

STATE OF OKLAHOMA, CORPORATION COMMISSION OF THE STATE OF OKLAHOMA, AND PEERLESS OIL AND GAS COMPANY

APPEAL FROM THE SUPREME COURT OF THE STATE OF OKLAHOMA

STATEMENT AS TO JURISDICTION

ROBERT M. RAINEY,
ROBERT C. FOULSTON,
Counselors for Appellant.

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SUPREME COURT OF THE UNITED STATES

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No. 134

No. 32123

REPUBLIC NATURAL GAS COMPANY, A CORPORATION,
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vs.

STATE OF OKLAHOMA, CORPORATION COMMISSION OF THE STATE OF OKLAHOMA, AND PEERLESS OIL AND GAS COMPANY, A CORPORATION,
Appellees

JURISDICTIONAL STATEMENT

Pursuant to the provisions of Rule No. 12 of the Supreme Court of the United States, Republic Natural Gas Company, appellant, files this its separate statement particularly disclosing the basis upon which it is contended the Supreme Court of the United States has jurisdiction upon appeal to review the final judgment and decree of the Supreme Court of Oklahoma appealed from herein, as follows:

I

Basis upon Which It Is Contended That the United States Supreme Court Has Jurisdiction

The judgment of the Supreme Court of Oklahoma upheld as valid statutes of the State of Oklahoma and an order

of the Oklahoma Corporation Commission issued thereunder denying the specific and timely contention of appellant that said statutes and said order denied appellant the equal protection of laws and deprived appellant of its property without due process of law in contravention of the Fourteenth Amendment to the Federal Constitution. Said judgment further held that appellant, a foreign corporation, by having applied for and accepted the privilege of doing business in Oklahoma at a time when said statutes were in effect (although they had not then been construed as authorizing an order such as that entered herein by the Oklahoma Corporation Commission, and although no application of said statutes to appellant was sought until many years thereafter), waived the right and was estopped to object to the constitutionality of said statutes and said order, thereby upholding the validity of said statutes and order despite appellant's specific and timely assertions that the same were repugnant to the equal protection and due process clauses of the Federal Constitution.

Said final judgment was rendered by the highest court of the State of Oklahoma in which a decision could be had, and it upheld the validity of the statutes and of the order aforesaid in a suit in which the question of the validity thereof was specifically and timely drawn in question on the ground of their being repugnant to the equal protection of laws and due process clauses of the Fourteenth Amendment to the Constitution of the United States.

II

Statutory Provisions Believed to Sustain Jurisdiction

The statutory provision vesting the Supreme Court of the United States with jurisdiction of this appeal in Section

237 of the Judicial Code, as amended (28 U. S. C. A. § 344a), which reads:

> "Section 344(a). A final judgment of decree in any suit in the highest court of a state in which a decision could be had . . . where is drawn in question the validity of a statute of any state, on the ground of its being repugnant to the Constitution . . . of the United States, and a decision is in favor of its validity, may be revived by the Supreme Court upon a writ of error."

By 45 Stat. 54, as amended (28 U. S. C. A. §§861a and 861b), writs of error are abolished and the remedy of appeal is substituted therefor.

III.

The State Statutes and the Order of the Oklahoma Corporation Commission Issued Thereunder, the Validity of Which Are Involved.

The order of the Oklahoma Corporation Commission, the validity of which has been sustained by final judgment of the Supreme Court of the State of Oklahoma, the highest court of said state, as not being repugnant to the Constitution of the United States, is based upon and was issued pursuant to purported delegated legislative power to make said order by virtue of Session Laws of 1913, Chapter 198, page 440, Section 3 (52 O. S. 1941, §233, p. 1607) and Session Laws of 1915, Chapter 197, pages 326 through 329, Sections 1 through 12 (52 O. S. 1941, §§236-247, pages 1608-1609). There is involved upon this appeal the validity of said Oklahoma statutes, as construed and applied by the Oklahoma Corporation Commission and by the Supreme Court of the State of Oklahoma, and the validity of the Oklahoma Corporation Commission's order purportedly issued pursuant thereto.

The specific order of the Oklahoma Corporation Commission reads as follows (copy of complete order is hereto attached):

"ORDER

"It is therefore ordered by the corporation Commission of the State of Oklahoma as follows:

"1. That the respondent, Republic Natural Gas Company, be, and it is hereby required to take gas ratably from applicant's well known as Peerless Oil and Gas Company Grump No. 1 well, located in the Southwest Quarter (SW¼) of Section 14, Township 6 North, Range 15 East C. M., in Texas County, Oklahoma, in the Hugoton Oklahoma Gas Field, and to make necessary connection as soon as applicant lays a line connecting said well with respondent's line, and to continue to do so until the further order of this Commission; provided that, applicant shall lay its line from its well to the lines of respondent at some point designated by the respondent, but in said Section 14 in which said well of Peerless Oil and Gas Company has been drilled; and said respondent is required to make said designation immediately and without unreasonable delay, and in event of failure of respondent so to do, respondent shall no longer be permitted to produce any of its wells located in the Hugoton Oklahoma Gas Field.

"2. The terms and conditions of such taking of natural gas by Republic Natural Gas Company from said Peerless Oil and Gas Company's well shall be determined and agreed upon by and between applicant and respondent; and in the event said parties are unable to agree, applicant and respondent are hereby granted the right to make further application to the Commission for an order fixing such terms and conditions; and the Commission retains jurisdiction hereof for said purpose."

Chapter 198, Session Laws 1913 (52 O. S. 1941, § 233, p. 1607) enacts:

"Section 1. All natural gas under the surface of any land in this state is hereby declared to be and is the property of the owners, or gas lessees, of the surface under which gas is located in its original state.

"Section 2. Any owner, or oil and gas lessee, of the surface, having the right to drill for gas shall have the right to sink a well to the natural gas underneath the same and to take gas therefrom until the gas under such surface is exhausted. In case other parties, having the right to drill into the common reservoir of gas, drill a well or wells into the same, then the amount of gas each owner may take therefrom shall be proportionate to the natural flow of his well or wells to the natural flow of the well or wells of such other owners of the same common source of supply of gas, such natural flow to be determined by any standard measurement at the beginning of each calendar month; provided, that not more than twenty-five percent of the natural flow of any well shall be taken, unless for good cause shown, and upon notice and hearing the Corporation Commission may, by proper order, permit the taking of a greater amount. The drilling of a gas well or wells by any owner or lessee of the surface shall be regarded as reducing to possession his share of such gas as is shown by his well.

"Section 3. Any person, firm or corporation, taking gas from a gas field, except for purposes of developing a gas or oil field, and operating oil wells, and for the purpose of his own domestic use, shall take ratably from each owner of the gas in proportion to his interest in said gas, upon such terms as may be agreed upon between said owners and the party taking such, or in case they cannot agree at such a price and upon such terms as may be fixed by the Corporation Commission after notice and hearing; provided, that each owner shall be required to deliver his gas to a common

point of delivery on or adjacent to the surface overlying such gas.

"Section 4. Any person, firm or corporation, taking more than his or its proportionate share of such gas, in violation of the provisions of this act, shall be liable to any adjoining well owner for all damages sustained thereby and subject to a penalty for each violation not to exceed five hundred dollars ($500.00), and each day such violation is continued shall be a separate offense.

"Section 5. Any person or agent of a corporation, who takes gas, or aids or abets in the taking of gas, except as herein provided, either directly or indirectly, as an individual, officer, agent or employee of any corporation, shall be guilty of grand larceny, and, upon conviction thereof, shall be sentenced to the penitentiary not to exceed five (5) years."

Chapter 197, Session Laws 1915 (52 O. S. 1941, §§236 through 247, pages 1608-1609) is an act to conserve natural gas, to prevent waste thereof, and to provide for equitable taking and purchase of same, conferring jurisdiction on the Corporation Commission to administer the law and to enforce its orders made pursuant thereto. Section 1 makes unlawful the production of natural gas in such manner and under such conditions as to constitute waste. Section 2 defines the term "waste." Section 3 provides in substance that whenever natural gas in commercial quantities is encountered in any well drilled for oil or gas, such gas shall be confined to its original stratum until such time as the same can be produced and utilized without waste; it further defines what constitutes a commercial quantity, and confers jurisdiction on the Commission to require the conservation of gas in accordance with the provisions of the Act.

Sections 4 and 5 are as follows:

"Section 4. That whenever the full production from any common source of supply of natural gas in this state is in excess of the market demands, then any person, firm or corporation, having the right to drill into and produce gas from any such common source of supply, may take therefrom only such proportion of the natural gas that may be marketed without waste, as the natural flow of the well or wells owned or controlled by any such person, firm or corporation bears to the total natural flow of such common source of supply having due regard to the acreage drained by each well, so as to prevent any such person, firm or corporation securing any unfair proportion of the gas therefrom; provided, that the Corporation Commission may by proper order, permit the taking of a greater amount whenever it shall deem such taking reasonable or equitable. The said commission is authorized and directed to prescribe rules and regulations for the determination of the natural flow of any such well or wells, and to regulate the taking of natural gas from any or all such common sources of supply within the state, so as to prevent waste, protect the interests of the public, and of all those having a right to produce therefrom, and to prevent unreasonable discrimination in favor of any one such common source of supply as against another.

"Section 5. That every person, firm or corporation, now or hereafter engaged in the business of purchasing and selling natural gas in this state, shall be a common purchaser thereof, and shall purchase all of the natural gas which may be offered for sale, and which may reasonably be reached by its trunk lines, or gathering lines without discrimination in favor of one producer as against another, or in favor of any one source of supply as against another save as authorized by the Corporation Commission after due notice and hearing; but if any such person, firm or corporation, shall be unable to purchase all the gas so offered, then it shall

purchase natural gas from each producer ratably. It shall be unlawful for any such common purchaser to discriminate between like grades and pressures of natural gas, or in favor of its own production, or of production in which it may be directly or indirectly interested, either in whole or in part, but for the purpose or prorating the natural gas to be marketed, such production shall be treated in like manner as that of any other producer or person, and shall be taken only in the ratable proportion that such production bears to the total production available for marketing. The Corporation Commission shall have authority to make regulations for the delivery, metering and equitable purchasing and taking of all such gas and shall have authority to relieve any such common purchaser, after due notice and hearing, from the duty of purchasing gas of an inferior quality or grade."

Section 6 provides for the institution of proceedings before the Corporation Commission and confers jurisdiction upon it to hear and determine any question relating to the enforcement of the Act. Section 7 confers appellate jurisdiction upon the Supreme Court of Oklahoma to review the orders of said Commission made pursuant to the Act. Section 8 confers jurisdiction upon the Corporation Commission to make regulations for the prevention of the waste of natural gas and for the protection of all natural gas, fresh water, and oil bearing strata encountered in any well drilled for oil or natural gas.

Section 9 reads as follows:

"Section 9. Before any person, firm or corporation shall have, possess, enjoy or exercise the right of eminent domain, right of way, right to locate, maintain, construct or operate pipe lines, fixtures, or equipments belonging thereto or used in connection therewith, for the carrying or transportation of natural gas, whether for hire or otherwise, or shall have the right to engage in the business of purchasing, piping, or transporting

natural gas, as a public service, or otherwise, such person, firm, or corporation, shall file in the office of the Corporation Commission a proper and explicit authorized acceptance of the provisions of this Act."

Sections 10 and 11 are immaterial for the purposes of this appeal.

Section 12 provides that in addition to any penalty that may be imposed by the Commission for contempt, any person violating the provisions of the Act is guilty of a misdemeanor and subject to fine not exceeding $5,000.00 or by imprisonment, or by both fine and imprisonment.

IV

Date of Judgment and Date of Application for Appeal Therefrom

The date of the final judgment of the Supreme Court of Oklahoma, which is now sought to be reviewed, is February 18, 1947. Finality thereof was stayed by the filing of appellant's petition for rehearing on March 3, 1947. On March 25, 1947, the final judgment of February 18, 1947, was amended by the Supreme Court of Oklahoma, and on the same day said court denied appellant's petition for rehearing without opinion. The judgment as amended therefore became final on March 25, 1947.

Appellant's application for leave to appeal was presented and the appeal was allowed on May 14th, 1947, within three months from the date of the final judgment sought to be reviewed. Hence, said application was timely (28 U. S. C. A. § 350).

V

Nature of The Case and Rulings of Oklahoma Supreme Court Bringing Case Within the Jurisdictional Provisions Relied upon.

In this proceeding Peerless Oil and Gas Company, the owner of a gas well in Hugoton, Oklahoma, gas field, sought and obtained from the Oklahoma Corporation Commission an order, issued pursuant to statutory authority allegedly granted by the aforesaid Oklahoma state statutes, requiring Republic Natural Gas Company, a private corporation which owned and produced gas from its own gas wells in said Hugoton, Oklahoma, field, and gathered the same into its own gathering system, selling to two unrelated pipe line companies its own gas therefrom, which purchased no gas and transported no gas except its own gas from its own gas wells, and which was neither in fact a common purchaser nor a common carrier of natural gas, to accept into its private gathering system and to purchase and take from Peerless, gas which Peerless produced from its gas well.

The essential facts herein are not in dispute. They appear in the written opinion of the Oklahoma Supreme Court, a copy of which is hereto attached. Those material to jurisdictional considerations may be briefly summarized thus:

In 1913 and in 1915 the Oklahoma Legislature enacted statutes which, as construed by the Oklahoma Supreme Court, provided that any person who transports or sells natural gas in Oklahoma—irrespective of whether or not he be *in fact* a common purchaser or a common carrier, either or both—must accept into his private gathering system and must take and pay for, ratably, all natural gas any other person may offer for sale which may reasonably be reached by his gathering system.

In or shortly prior to 1937 (page 63, typewritten opinion of Oklahoma Supreme Court), appellant, a foreign corporation (opinion, p. 70), applied for and accepted the privilege of doing business in Oklahoma (opinion, p. 70). At that time—and until the instant judgment herein appealed from—the 1913 and 1915 statutes had not been construed as applicable or applied to persons not common carriers or common purchasers (opinion, p. 67). Commencing in 1937 (opinion, p. 4), appellant drilled a number of gas wells in the Hugoton field (opinion, p. 63). It constructed its own gathering system (opinion, p. 63). It sold all of its gas from its gathering system to two pipe line companies wholly unrelated to it through stock ownership or otherwise (opinion, p. 63).

Appellant has never held itself out as or purported to be a common carrier or a common purchaser of gas (opinion, p. 63. It has never purchased any gas or transported or sold any gas except its own gas obtained from its own gas wells (opinion, p. 63).[1]

In April, 1944 (opinion, p. 64), Peerless, appellee herein, completed a commercial gas well in the Hugoton field (opinion, p. 63). This well is nearly surrounded by wells owned and operated by appellant which are draining gas from Peerless' well (opinion, p. 64). Peerless did not construct a gathering system or otherwise attempt to obtain a market for its gas. Instead, it filed the instant application with the Oklahoma Corporation Commission seeking an order compelling appellant to purchase gas ratably from the Peerless well and carry it to markets in appellant's private gathering system.

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[1] Sole exception is that during World War II, at the insistence of the Petroleum Administrator for War, appellant carried in its gathering lines, free of charge, gas from wells in the Hugoton field owned by other persons; this was an emergency War measure required by the P. A. W. as a prerequisite to permitting appellant to drill additional wells of its own (Opinion, p. 63).

Over appellant's objections that such order, and said statutes if construed as authorizing such order, infringed upon appellant's constitutional rights under the Fourteenth Amendment to the Federal Constitution, the Oklahoma Corporation Commission issued the order prayed for.

Upon appeal to the Oklahoma Supreme Court, appellant again contended, *inter alia*, that said statutes as so construed and said order were repugnant to the equal protection and due process clauses of the Federal Constitution.

The Supreme Court of Oklahoma affirmed the Commission's order and held: (a) that the statutes and the order were not violative of the equal protection and due process clauses of the Federal Constitution (opinion, pp. 65-66, 69-70); and (b) that appellant, by merely having applied for and accepted a license to do business in the State of Oklahoma at a time when said statutes were in effect, although never having been construed or applied, thereby waived the right and was estopped to assert the invalidity of said order and of said statutes, as subsequently construed, interpreted, and applied under the Fourteenth Amendment to the Federal Constitution (opinion, p. 70).

Specific excerpts from the pleadings, assignment of errors to the Oklahoma Supreme Court, briefs, and the court's opinion, clearly demonstrating the appellate jurisdiction of the United States Supreme Court under Section 237 of the Judicial Code, as amended, are hereinafter quoted under subdivision VIII of this jurisdictional statement.

VI

State of Proceedings and Manner in Which Federal Questions Were Raised

Appellant, Republic Natural Gas Company, first raised the Federal issues here involved by specific averments in its answer filed before the Oklahoma Corporation Commission.

Upon appeal from the Commission's order to the Oklahoma Supreme Court, appellant, in its petition in error, assigned as error that the statutes as construed by the Commission and the order itself were repugnant to the equal protection and due process clauses of the Federal Constitution. These assignments of error were renewed by appellant in its specification of those of its assigned errors which it intended to urge upon appeal. The Federal issues were expressly raised in appellant's original and reply briefs to the Oklahoma Supreme Court, in its oral argument to that court, and in its petition for rehearing.

Specific quotations from each of the aforesaid documents, showing precisely when and in what language appellant raised the Federal issues before the Oklahoma Corporation Commission and before the Oklahoma Supreme Court, are given under subdivision VIII of this statement.

VII

Manner in Which Federal Questions Involved Were Passed upon by the Oklahoma Supreme Court

Under subdivision VIII of this jurisdictional statement are listed quotations from the Oklahoma Supreme Court's opinion showing how the court disposed of the Federal issues involved. In brief, however, the Oklahoma Supreme Court held the statutes, and the Commission's order issued pursuant thereto, were not unconstitutional under the due process of equal protection clauses of the Fourteenth Amendment to the Federal Constitution even though appellant was neither a common carrier nor a common purchaser of natural gas For its authority, the court cited *Champlin Refining Co.* v. *United States*, — U. S. ——, 91 L. Ed. 9. The court then distinguished *Thompson* v. *Consolidated Gas Utilities Co.*, 300 U. S. 55, 81 L. Ed. 510, and *Texoma Natural Gas Co.* v. *Railroad Commission of Texas*, 59 F. (2d) 750

(W. D. Texas), two of the authorities relied upon by appellant, upon the ground that in the case at bar appellant, by having obtained the privilege of doing business in Oklahoma at a time when the controversial statutes were in effect, was estopped to contend that the statutes and the order thereunder issued were unconstitutional. *Pierce Oil Corp.* v. *Phoenix Refining Co.*, 259 U. S. 125, 66 L. Ed. 855, is relied upon by the Oklahoma Supreme Court as substantiating its judgment on the waiver-estoppel issue.

Thus, the Oklahoma Supreme Court held, first, that the statutes and the Commission's order were not repugnant to the Federal Constitution, and, secondly, that appellant was estopped to assert their constitutional invalidity in any event.

VIII

Excerpts from Record Bringing Cause Within Statute Conferring Jurisdiction upon United States Supreme Court.

In appellant's answer filed before the Oklahoma Corporation Commission, the following, among other, defenses were interposed:

> "15. Respondent (Republic Natural Gas Company, present appellant) denies that it has any duty to produce natural gas from its wells ratably with the well of Peerless Oil and Gas Company, or to take, purchase, and produce natural gas from the Peerless Oil and Gas Company's well ratably with the wells of Republic Natural Gas Company; and if any laws of the State of Oklahoma or orders of the Corporation Commission of the State of Oklahoma purport to compel Republic Natural Gas Company, under the facts and circumstances herein alleged, such laws, if any, of the State of Oklahoma are illegal, unconstitutional, and void, for the reasons herein particularly set forth; and if any of the orders, directives of the Corporation

Commission of the State of Oklahoma purport or are to be construed as requiring this respondent, engaged solely in the production and gathering of natural gas and the sale thereof in the field, to purchase and take gas from the applicant when it neither desires to do so and does not need the same, then such rules, regulations, and directives of the Corporation Commission of the State of Oklahoma are unreasonable, illegal, void, and unauthorized." (Pages 36-A to 37-A, Tr. to Okla. Sup. Ct.)

"(h) That respondent has through diligence as aforesaid, provided itself with sufficient acreage, producing wells, gathering lines, and other facilities to fulfill the contracts of sale above referred to, has no desire or need to purchase gas from the said Peerless Oil and Gas Company, and should it be required to do so would result in reducing the amount of gas which the respondent is producing from its own leasehold estates and wells, would deny the respondent the right to market its own gas to the exact extent it was required to purchase gas from the Peerless Oil and Gas Company, and would require a division of the private markets and private facilities of the respondent with others, all without any ownership or investment on the part of the said Peerless Oil and Gas Company.

"(i) Respondent further states that it is not and never has been a common purchaser or common carrier of natural gas, and that it does not purchase any gas for the purpose of transportation or otherwise. That it holds the leasehold estates from which it produces its gas for its own purposes under the terms of oil and gas leases containing the following or similar clauses as relates to its obligations to its lessors under the terms of said leases:

"'The lessee shall pay lessor, as royalty, one-eighth of the proceeds from the sale of the gas, as such, for gas from wells where gas only is found, and where not sold shall pay Fifty ($50.00) Dollars per annum as royalty from each such well, and while such

royalty is so paid such well shall be held to be a producing well under paragraph numbered two hereof . . .'" (Okla. Sup. Ct. Tr., pp. 44-A to 45-A)

"(e) That the purpose of the application herein is to require the respondent to share its private markets, contracts, and commitments, and the use of its gathering lines and other facilities for the purpose of buying and transmitting gas of the Peerless Oil and Gas Company from the well described in the application, said Peerless Oil and Gas Company not having contributed in money, services, negotiations, skill, forethought, or otherwise, to the development of such markets, and the construction of such pipelines and other facilities.

"That the effect of the granting of the application herein would compel the respondent to buy gas which it has no need for and no desire to buy, thus reducing the amount of gas which it can produce in the exact amount that it would be required to buy gas from the Peerless Oil and Gas Company with the result that its investment would be impaired, its ability to make a return upon investment to pay interest, taxes, administrative expense and other carrying charges would be destroyed, it would be subject to the hazard of sustaining enormous financial losses with the probable inability to carry out its contracts with the purchaser.

"That such result would inevitably follow from the granting of the application herein of Peerless Oil and Gas Company, such company not having contributed in money, services, negotiations, skill, forethought, or otherwise to the development of such market and the construction of the facilities of the respondent.

"20. The respondent further alleges that if Chapter 197 of the Laws of 1915 is valid and constitutional and applicable to the respondent herein, which it specifically denies, then respondent alleges . . ." (Okla. Sup. Ct. Tr. pp. 49-A to 50-A)

"27. Respondent alleges that it is not a common purchaser or common carrier of natural gas, and as herein alleged is engaged solely and exclusively in the business of producing and gathering natural gas and selling the same in the Hugoton gas field to purchasers who take and purchase such gas within said Hugoton gas field, and that it is not within the constitutional right of the State of Oklahoma, or of the Corporation Commission, or of any other legislative body to so define the business of this respondent, or to convert the business of this respondent into that of a common purchaser or common carrier." (Okla. Sup. Ct. Tr., p. 58-A)

"23. Respondent alleges that it has the legal right, so long as it can do so without waste (as such term may be and is legally determined and defined), to produce, gather, and transport in its own lines for the purpose of delivery to the purchasers thereof such gas as it may legally produce, and that it is under no legal or moral obligation to purchase gas from others or to divide with others its markets or marketing facilities. That if the effect of the order issued by the Corporation Commission in said docket referred to above, or in this case, or under the provisions of Chapter 198 of the Session Laws of Oklahoma of 1913, or the provisions of Chapter 197 of the Session Laws of the State of Oklahoma of 1915, or any other acts or statutes of the Legislature of the State of Oklahoma, or under any of the general rules and regulations of the Corporation Commission of the State of Oklahoma are subject to a construction which requires the respondent herein to purchase gas from the Peerless Oil and Gas Company, or any other person, firm, or corporation, or devote its gathering facilities to the use of any other person, firm, or corporation, with or without compensation, or to divide its markets or contracts with the applicant, or any other person, firm or corporation, that such statute, order, rule, or regulations have the inevitable effect of taking respondent's property without due process of law and depriving it of its property without

compensation and without its consent, and is in violation of the provisions of the Constitution of the United States.

"Respondent further alleges that if any statute, order, rule, regulation, or directive, by whatever name known, is intended to be construed to limit the production by this respondent to supply its existing markets and contracts (which this respondent does not understand to be the purport or effect of the order of this Commission of May 5, 1943), or if said statutes, rules, orders, regulations, directives, or other acts permit the production of gas by others without market or market facilities, and permit such production to be substituted for gas production which respondent would otherwise lawfully be permitted to use, thereby requiring respondent to purchase gas which it would otherwise not purchase in order to fulfill its requirements and contracts, that the property of the respondent, together with the contracts, rights, and privileges (are taken and denied), without any process of law, without due process of law, and without compensation; *such orders would be arbitrary, confiscatory, unreasonable, and in violation of the due process and equal protection clauses of the Fourteenth Amendment to the Constitution of the United States.*" (Okla. Sup. Ct. Tr., pp. 53-A to 55-A; emphasis added.)

Appellant's petition in error to the Supreme Court of Oklahoma contained, *inter alia*, the following two assignments of error:

"20. Chapter 198, Session Laws 1913 (Sec. 233, Title 52 O. S. 1941) as construed and applied by the Corporation Commission in ordering plaintiff in error, a producer only of gas, to purchase gas from another producer in the same field, denies it the equal protection of the laws, and deprives it of its property without due process of law in violation of the Fourteenth Amendment to the Constitution of the United

States, and of Sections 7 and 23, Article 2, of the Constitution of the State of Oklahoma.

"21. Said Order No. 17463 of the Corporation Commission denies plaintiff in error the equal protection of the laws, and deprives it of its property without due process of the law in violation of the Fourteenth Amendment to the Constitution of the United States, and of Sections 7 and 23, Article 2, of the Constitution of the State of Oklahoma."

In its brief to the Oklahoma Supreme Court, under the heading "Assigned Errors to be Urged" (Brief, page 17), appellant set forth assignments of error number 20 and 21, *supra*, verbatim (Brief, pp. 17, 18), and then stated (Brief, p. 18):

"For the purposes of this brief all of said assignments of error will be presented under the following propositions:

"III. The order of the Corporation Commission commanding Republic, a producer of natural gas in the Hugoton Gas Field, to purchase gas from Peerless, another producer of gas in the same field, denies Republic the equal protection of the laws and deprives it of its property without due process of law in violation of the Fourteenth Amendment to the Constitution of the United States and of Sections 7 and 23, Article 2, of the Constitution of the State of Oklahoma. Therefore, said order and any statute of Oklahoma that may be construed as authorizing the making of said order, are null and void."

Proposition "III", quoted immediately hereinabove, is indexed as such at page iii of appellant's brief. It appears as the introductory heading at page 38 of said brief, and the point was duly urged upon the Oklahoma Supreme Court with argument and the citation of authority, at pages 38 through 48 of the brief. It was again presented

by appellant in its "Response of plaintiff in Error to Motion to Dismiss, and Reply Brief of Plaintiff in Error" —for example (page 22):

> "The order also denies Republic the equal protection of the laws and takes its property without due process of law in contravention of the Constitution of Oklahoma and of the Fourteenth Amendment to the Constitution of the United States."

Finally, appellant once again urged this proposition upon the Oklahoma Supreme Court at page 2 of its Petition for Rehearing:

> "Plaintiff in error, in its petition in error and in its brief and oral argument herein asserted that Chapter 198, Session Laws 1913, as construed and applied by the Corporation Commission denies it the equal protection of the law and deprives it of its property without due process of law in violation of the Fourteenth Amendment to the Constitution of the United States and of Sections 7 and 23 of Article 2 of the Constitution of the State of Oklahoma. In support of such contention, plaintiff in error relied upon the cases of: Texoma Natural Gas Co. v. Railroad Commission of Texas, 59 Fed. (2d) 750, and Thompson v. Consolidated Gas Utilities Co., 300 U. S. 55, 81 L. Ed. 510, as being decisive thereof."

In determining the Federal issues adversely to appellant's contentions, the Oklahoma Supreme Court held (syllabi 2 and 3, written by the Court):

> "'2. Where a foreign corporation obtains permission to do business within the State of Oklahoma, and pursuant to such permission enters the state and produces and transports natural gas therein, it may not successfully contend that a statute, relating to its operations, and applying alike to both domestic and foreign corporations, in full force and effect at the time it obtained permission to do business within the state is unconsti-

tutional, and that an order of the Corporation Commission made pursuant to authority granted by such statute is void.

"3. Record examined, and held that the order of the Corporation Commission requiring Republic Natural Gas Company to take ratably from a well of Peerless Oil and Gas Company producing from the same common source of supply, or to cease the production of gas from said common source of supply through its own wells, was not arbitrary or beyond the jurisdiction of the Commission."

The body of the Oklahoma Supreme Court's opinion meets the Federal issues in this manner:

"In the previous orders of the Commission governing the production and taking of gas from the Hugoton field . . . neither expressly nor by inference was any requirement made upon Republic to take gas from any wells except its own" (p. 63).

". . . Republic . . . has constructed a pipe line gathering system of large size from its main outlet in the State of Kansas into Texas County, Oklahoma, whereby a portion of the production from its wells was transported to its markets in Oklahoma and Kansas . . . there was no connection through stock ownership or otherwise between Republic and the pipe line outlets purchasing its gas. . . . It (Republic) has at no time held itself out as, or purported to be, a common purchaser or common carrier of gas, nor has it transported gas from any wells other than its own . . . ." (p. 63).

"The Peerless well was completed as a producer on April 28, 1944 . . . It is almost surrounded by wells owned and operated by Republic which, according to the testimony of all the expert witnesses who testified on the subject, are draining from under the Peerless

lease. . . . all of the gas production from the wells in the Hugoton field in Oklahoma is from the same common source of supply . . .'' (p. 64).

''The Commission found that Republic was a common purchaser of natural gas in the Hugoton field; that it was a common carrier of natural gas in said field. . . .

''By its order it required Republic to make connection with the Peerless well . . . and that if it failed to make such connection . . . Republic should no longer be permitted to produce any of its wells located in the Hugoton Gas Field in Oklahoma'' (p. 65).

''Republic contends that the finding that it was a common purchaser of gas and the finding that it was a common carrier are erroneous and not supported by the evidence, since the evidence does not show that it holds itself out as a common carrier or common purchaser, or has ever offered to purchase gas from, or carry gas for any other person or the public generally.''

''We think it unnecessary to pass upon this contention, since from the record it clearly appears that the finding of the Commission that 52 O. S. 1941, Sections 232 and 233, being Sections 2 and 3 of Ch. 198 of S. L. 1913, are applicable to the situation here involved, is fully sustained by the undisputed evidence, and we are of opinion that by said sections the Commission was empowered to require Republic to take ratably from the Peerless well'' (pp. 65-66).

''. . . the above quoted provisions of the 1913 law . . . require one who is engaged in the business of producing, transporting and selling gas to take ratably from other producers from the same common reservoir who have no outlet for their production, *regardless of whether the party so transporting and selling his own gas be a common carrier or common purchaser of gas from that reservoir.*

''In Champlin Refining Co. *v.* United States, — U. S. —, 91 L. Ed. 9, 67 Sup. Ct. Rep. 1, the Supreme Court of the United States held that . . . the Interstate Commerce Commission could lawfully require the Champlin Refining Company *to furnish information* as

provided in said section, *although it was not a common carrier or common purchaser*, but transported only its own product through its pipe line from one state to another. . . . *This case supports the contention of Peerless* . . ." (p. 69; emphasis added).

"In support of its contention that . . . the 1913 law is unconstitutional as depriving it of its property without due process of law, Republic relies upon Texoma Natural Gas Co. *v.* Railroad Commission of Texas, 59 Fed. 2d 750, and Thompson *v.* Consolidated Gas Utilities Co., 300 U. S. 55, 81 L. Ed. 510, but in each of those cases the conservation Act stricken down as unconstitutional, was enacted long after the parties . . . had entered the state and made contracts for the production and purchase of natural gas. . . .

"In the instant case the record discloses that both the 1913 and 1915 Acts were enacted long prior to the time that Republic, a foreign corporation, obtained the privilege of conducting its business operations within the state, and engaged in such business and entered into its various contracts. Having entered this state and obtained the privilege of conducting its business operations therein when said laws were in full force and effect,[2] it consented to be bound by such laws, and may not now complain that an order entered by the Commission within the scope of such laws is unconstitutional. Pierce Oil Corporation *v.* Phoenix Refining Co., 259 U. S. 125. . . ." (p. 69 & 70).

"Republic asserts that the order made by the Commission is arbitrary and beyond the jurisdiction of the Commission, and that its effect is to require Republic to become a common purchaser of gas in the Hugoton field.

"We think these assertions are not sustained either by the law or by the facts. . . .

". . . the present order . . . was for the purpose of correcting an inequality in the taking of gas

[2] Admittedly, however, the statute had never before been construed as authorizing such an order as the instant one, nor had the Oklahoma Corporation Commission ever theretofore issued a comparable order: "So far as we have been able to find this court has never been called upon to construe and apply the provisions of these sections." (Opinion, p. 67.)

from said field whereby the correlative rights of Peerless were being infringed . . . and not an arbitrary act of the Commission, nor beyond its power and jurisdiction.

"Neither did the order require Republic to become a common purchaser, since it gave Republic a (Hobson's) choice between taking the gas from Peerless and paying therefor direct, or marketing the gas and accounting to Peerless therefor, or to shut in its own production. . . . . It was left free to chose either of these three methods. . . . .

"The order of the Commission is affirmed" (pp. 71 & 72).

IX

Grounds upon Which It Is Contended the Federal Questions Involved Are Substantial

Mere summarization of the holding of the Oklahoma Supreme Court should suffice to demonstrate substantiality of the Federal Issues presented by this appeal.

The final judgment holds that a person producing gas from his own gas wells, gathering the same in his own gathering system, selling his own gas therefrom to an unrelated purchaser, and neither purchasing gas from nor transporting gas for any other person, and, hence, being neither a common purchaser nor a common carrier, may be compelled to accept into his private gathering system and purchase gas from a well owned by a third person. It holds such a producer and gatherer of his own gas may be compelled to reduce his own production from his own wells in order to purchase and accept into his own gathering system gas from a well owned by another person. It holds such a producer and gatherer of his own gas may be required to make his own private gathering facilities available to another person, and to share the market he has for his own gas with another person who has a gas well but no market

and no gathering facilities of his own. And it holds that these results may be compelled not in order to prevent waste of a natural resource, but, merely;

> ". . .. for the purpose of correcting an inequality in the taking of gas from said field whereby the correlative (private) rights of Peerless were being infringed" (opinion, p. 71).

It is submitted this judgment is erroneous, and that the statutes as construed by the Oklahoma Supreme Court and the order of the Oklahoma Corporation Commission pursuant to the alleged authority conferred thereby, are unconstitutional as violative of the equal protection and due process clauses of the Fourteenth Amendment to the United States Constitution: *Thompson* v. *Consolidated Gas Utilities Co., supra,* 300 U. S. 55, and *Texoma Natural Gas Co.* v. *Railroad Commission of Texas, supra,* 59 F. (2d) 750.

The Oklahoma Supreme Court's final judgment also holds that appellant, by merely having applied for and accepted the privilege of doing business in Oklahoma at a time when the 1913 and 1915 statutes were in effect, waived its right and thereby became estopped thereafter to assert the constitutional invalidity of those statutes. It holds that the State of Oklahoma may impose upon a foreign corporation seeking to transact business in Oklahoma the requirement that, in order to be permitted to do so, the foreign corporation must consent to be bound by statutes repugnant to the Federal Constitution.

It is submitted that the judgment is likewise erroneous in this respect, and that, *at least* where there has been no affirmative, express waiver by the foreign corporation of its right to resist the enforcement of unconstitutional statutes (*Pierce Oil Corp.* v. *Phoenix Refining Co.,* 259 U. S. 125, 66 L. Ed. 855—a decision we consider overruled by subsequent authorities hereinafter cited), the mere fact that

a foreign corporation seeks and obtains the right to do business in a state does not operate as a waiver of its right to assert, or estop it from urging, unconstitutionality of state statutes in effect at the time the license to transact business is obtained: *W. W. Cargill Co.* v. *Minnesota ex rel. Railroad & W. Comm.*, 180 U. S. 452, 45 L. Ed. 619; *Union Pacific Ry. Co.* v. *Public Service Comm.*, 248 U. S. 67, 63 L. Ed. 131; *Hanover Fire Ins. Co.* v. *Carr*, 272 U. S. 494, 71 L. Ed. 372 (see Case Note, 40 Harv. L. Rev. 777); *Power Mfg. Co.* v. *Saunders*, 274 U. S. 490, 71 L. Ed. 1165, (see Case Note, 41 Harv. L. Rev. 95); *Foster-Fountain Packing Co.* v. *Haydel*, 278 U. S. 1, 73 L. Ed. 147; *Bacardi Corp.* v. *Domenech*, 311 U. S. 150, 85 L. Ed. 98; *Northwestern Nat. Ins. Co. of Milwaukee, Wis.*, v. *Lee*, 49 F. (2d) 274 (D Oregon, 3 Judge Court); *Canadian Pac. Ry. Co.* v. *Sullivan*, 126 F. (2d) 433 (C. C. A. 1), cert. den. 316 U. S. 696, 86 L. Ed. 1766; and *Spaulding* v. *Douglas Aircraft Co.*, 154 F. (2d) 419 (C. C. A. 9).

In fact, it is submitted that the State of Oklahoma was without constitutional right to exact any such waiver from appellant, and that, even if given, such a waiver of constitutional rights would itself be void and unenforceable: *Union Pacific Ry. Co.* v. *Public Service Comm., supra*, 248 U. S. 67; *Terral* v. *Burke Construction Co.*, 257 U. S. 529, 66 L. Ed. 352; *Frost* v. *Railroad Comm.*, 271 U. S. 583, 70 L. Ed. 1101; *Quaker City Cab Co.* v. *Pennsylvania*, 277 U. S. 389, 72 L. Ed. 927; *Phillips Petroleum Co.* v. *Jenkins*, 297 U. S. 629, 80 L. Ed. 943; and *Springfield Fire & Marine Ins. Co.* v. *Holmes*, 32 F. Supp. 964 (D. Mont., 3 judge court), rev. on other grounds, 311 U. S. 606, 85 L. Ed. 384, rehg. den. 311 U. S. 726, 85 L. Ed. 473.

The Oklahoma Supreme Court's ruling on the waiver-estoppel issue is erroneous in any event inasmuch as the 1913 and 1915 statutes had never been construed by the

Oklahoma Supreme Court or by the Oklahoma Corporation Commission as applicable to such a factual situation as is presented by the case at bar, prior to the instant proceedings, and, hence, the unconstitutional application of said statutes to appellant was not attempted until long after appellant had obtained and exercised the privilege of transacting business in Oklahoma:

Hanover Fire Ins. Co. v. *Carr, supra,* 272 U. S. 494;
Frost v. *Corporation Commission, supra,* 278 U. S. 515;
Connecticut Gen. Life Ins. Co. v. *Johnson,* 303 U. S. 77, 82 L. Ed. 673; and
Bacardi Corp. v. *Domenech, supra,* 311 U. S. 150.

X

Cases Sustaining Jurisdiction of United States Supreme Court

(a) The appeal having been perfected within three months from the date on which the judgment of the Oklahoma Supreme Court became final, is timely: 28 U. S. C. A. § 350; *Aspen Mining & Smelting Company* v. *Billings,* 150 U. S. 31, 37 L. Ed. 986; and *Gypsy Oil Comany* v. *Esco,* 275 U. S. 498, 72 L. Ed. 393.

(b) Appeal is the proper remedy for review of a decision of a State court of last resort in favor of the validity of a State statute, and of an administrative order issued pursuant to legislative authority purportedly delegated by such statute, where the statute and the order thereunder issued are alleged to infringe the Federal Constitution; 28 U. S. C. A. § 344 (a); *Western Turf Ass'n* v. *Greenberg,* 204 U. S. 359, 51 L. Ed. 520; *Great Northern Ry. Co.* v. *State of Minnesota,* 278 U. S. 503, 73 L. Ed. 477; *Nashville & St. L. Rys.* v. *White,* 278 U. S. 456, 73 L. Ed. 452; *Hamilton* v. *Regents of the University of California,* 293 U. S. 245, 79 L.

Ed. 343; and *Curry* v. *McCandless*, 307 U. S. 357, 83 L. Ed. 1139.

XI

Copies of All Opinions Delivered in Connection With the Judgment Sought to Be Reviewed

Appellant appends to this jurisdictional statement a copy of Order No. 17463 in Cause No. 902 before the Oklahoma Corporation Commission; a copy of the opinion and judgment of the Supreme Court of the State of Oklahoma, rendered upon appeal from the aforesaid Commission order on February 18, 1947; a copy of appellant's petition for rehearing filed March 3, 1947; a copy of the order of the Supreme Court of the State of Oklahoma entered on March 25, 1947, correcting the second paragraph of syllabus 2 of its February 18, 1947, opinion; and a copy of the Oklahoma Supreme Court's order of March 25, 1947, denying appellant's petition for rehearing.

Dated this 14th day of May, 1947.

Respectfully submitted,

ROBERT M. RAINEY,
First Nat'l. Bldg.,
Oklahoma City, Oklahoma;
ROBERT C. FOULSTON,
Fourth Nat'l Bank Building,
Wichita, Kansas;
Attorneys for Appellant.

APPENDIX "A"

[Stamp:] Filed in Supreme Court of Oklahoma, May 1, 1947. Andy Payne, Clerk.

BEFORE THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA

#32,123 Republic Natural Gas Co. vs. State of Oklahoma

In the Matter of the Application of Walker T. Pound, Conservation Officer, for a Well Spacing Order and Rules and Regulations Governing Production and Ratable Taking of Natural Gas in the Guymon Hugoton Field, Texas County, Oklahoma.

Cause CD No. 983

Order No. 17867

Report of the Commission

This cause came on for hearing before the Corporation Commission of the State of Oklahoma in its court room in the Capitol Office Building, Oklahoma City, Oklahoma, on the 24th day of May, 1945, at 10 o'clock, A. M., upon the application filed by the Conservation Officer and pursuant to order of the Commission setting the same for hearing and notice published as required by law; at which hearing, Chairman Reford Bond and Commissioners Ray O. Weems and Wm. J. Armstrong sitting, Floyd Green, Conservation Attorney, appeared for the Conservation Department and the following appearances were made: Earl Pruet and Kelsey Hutchinson for Peerless Oil and Gas Company; R. C. Foulston, George M. Green and R. M. Rainey for Republic Natural Gas Company; Colin C. Rae for Skelly Oil Company; R. M. Williams and E. G. De Parade for Phillips Petroleum Company; Del Howard and Joe Rolston Jr. for Cities Service Gas Company; Jarman & Jarman by Ed White for A. P. Gardner; and John Schoeppel for Waldo E. Stephens; whereupon evidence was presented in support of the application, and the

Commission closed the case and took the matter under advisement.

Now, on this 31st day of May, 1945, the Commission, having considered all of the testimony and being otherwise fully advised in the premises, finds as follows:

FINDINGS

1. That notice by publication of the filing of the application herein, the time and place of the hearing thereon, and the purpose of said hearing, has been regularly given in all respects as required by law, and the Commission has jurisdiction of the subject matter embraced in said application and of the parties interested therein, and jurisdiction to issue and promulgate the hereinafter prescribed order.

2. That the application in this cause requests the issuance of a spacing order in the Guymon Hugoton Pool pursuant to the provisions of House Bill No. 257 of the Twentieth Session of the Oklahoma Legislature.

3. That under date of December 27, 1944, the Commission issued its Order No. 17410 in Cause CD No. 861, providing for the manner and method of determining the capacity of the wells to produce in said pool and the making of allocations to the wells, and the Conservation Department has been operating under said order since January 1, 1945.

4. That the Hugoton Gas Field is located in the States of Oklahoma, Kansas, and Texas, and is one of the largest known gas reserves in the United States; that a large portion of said field lies within Texas County, Oklahoma, and has been named by this Commission the "Guymon-Hugoton Pool"; that the probable productive area of said pool is hereinafter more specifically described in this order.

5. That the Guymon-Hugoton Pool constitutes one common source of supply of gas, although there are three or more producing horizons that are interconnected, which are known as the Crider, Winfield, and Harrington horizons

and are found at an approximate depth of 2810 feet; that the average thickness of the producing formation is 45 feet; that there are approximately 191 wells in said pool, of which approximately 156 are now producing and connected to pipe lines; that the virgin pressure in said pool was approximately 442 pounds, but at the present time it has been reduced to approximately 400 pounds; that total reserves are estimated at seven trillion cubic feet.

6. That the first gas well in said common source of supply was drilled in the year 1922; that several pipelines have been laid and several companies have interests in said pool and are now engaged in the drilling and production of gas wells or in the transmission of gas from said pool, or both.

7. That pressure differentials exist to some extent between the wells and leases in said field, which appears to be due primarily to the fact that some wells have been produced for a longer period and have produced more gas than others, which shows that there is some migration of gas from some leases to others, and unless action is taken by the Commission the differentials will increase and cause inequities due to drainage, and waste will result. It is common knowledge that gas in a formation migrates toward the wells that are on production and have the lowest pressure, and that drainage thus caused, which if not equalized by counter-drainage from other properties, results in disproportionate production by the wells on the respective properties.

8. That the Conservation Department has taken production tests at various times in said pool in compliance with Orders Nos. 16377 and 17410 heretofore issued by this Commission; that the most recent tests have been made in compliance with said Order No. 17410, which takes into consideration acreage and deliverability; that well allowables have been established for the producing wells in said pool, and said allowables are set out in Exhibits Nos. 6 and 7 introduced in evidence in this cause; that this order should become effective as of June 1, 1945, and Order No. 17410 should be inoperative as of said date.

9. That the full production of gas from wells in said pool is greatly in excess of the market demand and of the transportation and marketing facilities.

10. That in the years 1913 and 1915 the Legislature of the State of Oklahoma enacted laws governing the production and ratable taking of natural gas and prohibiting the waste thereof, and authorizing and directing the Corporation Commission to promulgate rules and regulations for determination of the natural flow of wells and the taking of natural gas from the common sources of supply within the State so as to prevent waste, provide for ratable taking, and protect the interests of the public and all those having a right to produce therefrom; and the Commission was therein authorized and directed to give due regard to the acreage drained by each well in determining the amount of gas that should be produced from any common source of supply and fixing well allowables; such rules and regulations to give each owner or lessee an opportunity to produce as nearly as possible all of the natural gas located in its original state under the property owned by him, and permit him to produce it ratably with other persons having an interest therein and wells located thereon; that in the years 1933 and 1935 the Legislature enacted additional statutes which pertain principally to oil production, but in general providing that production of oil and gas in such manner as to constitute waste is prohibited, and authorizing and directing the Corporation Commission to make and promulgate rules and regulations for the prevention of such waste.

11. That pursuant to said statutes the Corporation Commission in January 1945 adopted general rules and regulations providing for the taking of potentials and for ratable taking of gas, which were and are applicable to all gas fields in this State, being Order No. 17528; that because of special conditions obtaining in the Guymon-Hugoton Pool said rules and regulations are insufficient to carry out the objects of the laws as to gas production; and in order to prevent waste, insure ratable taking, protect the interests of the public and all parties interested therein, to prevent

any lessee from securing an unfair proportion of the gas in said pool, and to give to each lessee and royalty owner an opportunity to recover the gas originally underlying the surface of the land owned by him, it is necessary to promulgate special rules and regulations for the Guymon-Hugoton Pool; that the provisions of the general Order No. 17528 should govern in all instances with the exception that in event of a conflict the special rules and regulations set out in this order should prevail.

12. That the allocation formula hereinafter set out in this order should be adopted by the Commission to permit each well to currently produce its ratable share of the gas and ultimately to produce the approximate amount originally underlying the lease, to protect the interests of the public and of all parties interested therein, and prevent waste; that in such formula many factors are considered, such as percentage of the well's capacity to produce, acreage, pressures, porosity, permeability, and thickness of the formation, of which acreage and percentage of capacity to produce are the most important; that in determining the ability of the well to put gas into a pipeline against pipeline pressure, which is known as deliverability, natural flow, pressure, porosity, permeability, and thickness of the formation should be considered.

13. That it appears that one well in said pool will adequately drain 640 acres without waste; that all wells heretofore drilled have been in one section as laid out by the Governmental Survey; that drilling units should be established for said Guymon-Hugoton Pool, which should contain not to exceed 640 acres within one Governmental section; provided however, that the short sections lying adjacent to the Oklahoma-Kansas State Line should be added to the unit immediately south of the short section, but in no event should any unit comprise more than 800 acres; that each well hereafter drilled should be located in the center of its unit or in any event not farther from the center than 467 feet; that in figuring allowables, if a unit contains more than 640 acres, that fact should be taken into consideration.

14. That the deliverability factor, hereinafter set out in this order, which takes into consideration each well's capacity to produce, porosity, permeability, pressures, thickness of the formation, and other factors, should be adopted in making allocations to wells in the pool.

15. That the establishment of the acreage and deliverability factors, as hereinafter set out in this order, is necessary for determination of well allowables, in order to prevent waste, protect the interests of the public and all persons interested in said common source of supply, and to give to each producer and owner an opportunity to produce currently his proportionate part of the gas taken from said field, and ultimately the approximate amount of gas originally underlying his land.

16. That under Enrolled House Bill No. 257 enacted by the Twentieth Session of the Oklahoma Legislature, only one well may be drilled in any unit, and where there are divided or undivided interests, or both, in a unit, and they are unable to agree upon a pooling of their interests in the development of the unit, either or all of the interested parties may file an application with this Commission for a pooling order, and this Commission, after notice and hearing, shall issue an order that is fair and reasonable for all interested parties and that will insure to each and all of the interested parties their fair proportion of the gas underlying such unit; provided however, that in figuring and making allocations, until such time as the working interests of the various owners within a unit are pooled, only the acreage of the lessee owning and operating the well shall be taken into consideration.

17. That all of the royalty owners in a unit should participate in the proceeds of any well produced in the unit in the ratio that the acreage of the royalty owned bears to the total acreage of the unit.

18. That in determining allocations in said pool, only developed acreage should be considered, and developed acreage should mean the acreage within a unit on which there is a producing well with a market outlet, or the owner of which is ready, willing, and able to permit or to

make a pipeline connection or deliver his gas to other market at the going price for gas in the field, and the allowlowable for such unconnected well should begin as hereinafter provided in this order.

19. The there should be two market demand periods each year, one beginning April 1 and ending September 30, and the other beginning October 1 and ending March 31, inclusive, with the idea of dividing the periods of high demand from those of lower demand; that the Commission will hold a hearing preceding each period, at which hearings the market demand and anticipated production of gas for each month of the period will be determined by nominations from all purchasers and takers and estimates from producers, that can be produced without waste; that the Conservation Department will make monthly allocations to wells, and if the market demand or anticipated production that can be produced without waste, as determined by the Commission, is shown to have increased or decreased during any period, the Conservation Department may adjust allowables to conform thereto, subject to approval by the Commission at the next regular hearing; that the Commission may hold hearings in addition to those herein mentioned at any time it deems advisable.

20. That in applying the allocation formula, the Conservation Department will prepare schedules which set out the anticipated production from the field and the allowable for each well for each calendar month of the period, and underproduction and overproduction which may result from application of said formula will be adjusted as hereinafter specifically set out in this order.

21. That all of the rules and regulations adopted in this order are necessary to accomplish the objects and purposes of the laws of the State of Oklahoma in the production of gas from the Guymon-Hugoton Pool, to prevent waste, protect the interests of the public and of all those having a right to produce gas therefrom, provide for ratable taking, obtain a greater recovery, prevent drainage not offset by counterdrainage, and encourage future development.

Declaration of Policy

It is the intention, purpose, and policy of the Corporation Commission of the State of Oklahoma in issuing this order to promulgate rules and regulations as authorized and directed by the laws of the State of Oklahoma governing production of natural gas in order to prevent waste, providing a uniform method of determining a percentage of the well's capacity to produce, and for ratable taking of gas, in order to protect the interests of the public and all parties interested therein, and to give each operator an opportunity to produce currently his proportionate part of the gas and ultimately to produce approximately the amount of gas originally underlying the surface of the land owned by him.

It is not the intention to limit or restrict the market demand for gas in the Guymon Hugoton Pool, but only to restrict production to market demand and prorate production equitably and fairly among the producers and owners.

It is further the intention of the Commission that that portion of the Hugoton Field in the State of Oklahoma be referred to as the Guymon Hugoton Pool.

Order

It is therefore ordered by the Corporation Commission of the State of Oklahoma as follows:

1. This order shall supersede Order No. 17410 issued by the Commission on the 27th day of December, 1944, in Cause CD No. 861, and shall be effective as of June 1, 1945, for the drilling and production of wells and the taking and transportation of natural gas in the Guymon-Hugoton Pool.

2. Drilling and/or spacing units, 640 acres in size consisting of one section according to the United States Governmental Survey, are hereby established for the development of the Guymon-Hugoton Pool located in Texas County, State of Oklahoma, the probable productive area

of which covers parts of the following described townships, to-wit:

Township One (1) North, Ranges Twelve (12) to Seventeen (17) East;

Townships Two (2), Three (3), and Four (4) North, Ranges Twelve (12) to Eighteen (18) East; and

Townships Five (5) and Six (6) North, Ranges Twelve (12) to Nineteen (19) East of the Cimarron Meridian,

which area may be extended by the drilling of additional wells, it being the intention to cover all of the productive area of said common source of supply, and any wells drilled into said common source of supply outside the area above described shall be drilled in the manner and according to the pattern herein described.

The short sections lying adjacent to the Kansas-Oklahoma State Line shall be added to and made a part of the unit immediately to the south of the short section, but in no event shall any unit comprise more than 800 acres.

Each well hereafter drilled in said pool shall be drilled in the center of its unit, and in no event farther than 467 feet from the center of the unit, which shall apply to the units comprising the short sections herein mentioned; provided that, an exception is hereby allowed for the five or six wells heretofore drilled at points other than the center of their units, which wells shall be treated as the well for its unit and no additional well shall be drilled therein.

3. Allocation Formula—A formula shall be, and is hereby, adopted for the purpose of allocating gas production to the wells in the pool, which formula shall consist of acreage and deliverability factors, as herein defined; and said formula shall be applied as herein set out.

4. Acreage Factor—(a) The acreage factor in said pool to be used in the allocation formula shall be 640 acres, and in no event more than 800 acres, as provided in paragraph 2 hereof.

(b) In determining the units herein prescribed, for the purpose of allocation of gas production, only developed

acreage shall be considered; and developed acreage shall mean any unit on which there is a producing well having a pipeline connection or other market outlet or the owner or operator of which is ready, willing, and able to permit or to make a connection and dispose of his gas at the going price in the field. If the operator or owner, by affidavit, or otherwise, shows to the Conservation Officer that he is ready, willing, and able to permit or to make a connection and the pipeline or other outlet refuses to take his gas, then his acreage shall be deemed developed acreage under this order. Before any unconnected well shall be granted an allowable, the operator shall tender its gas production to a purchaser by registered mail, and copy of said letter of tender shall be sent to the Conservation Officer. If at the end of thirty days no connection has been made and the Conservation Officer is satisfied that the operator has made such tender in good faith, then the Conservation Officer shall fix an allowable for said well to commence at the end of such thirty-day period; provided further, when there is no dispute between the seller and the purchaser, the producer or the purchaser shall file an affidavit on a form prescribed by the Commission, showing the date the well was connected and actual production was commenced, on which date the allowable shall be fixed for said well.

(c) When there are divided or undivided interests, or both, within any spacing unit and the owners of such interests are unable to agree upon a pooling of their interests in producing the unit, then the rights and obligations of such parties shall be determined by the Commission as provided in Section 4 of Enrolled House Bill No. 257 enacted by the Twentieth Session of the Legislature of Oklahoma, which by reference is made a part hereof as fully as if set out herein. Likewise any interested royalty owner and any party at interest shall have the right to apply to the Commission for a pooling order to enforce the pooling of all interests within the unit.

(d) Each operator shall file a sworn statement with the Oil and Gas Conservation Department, on a form approved by the Commission, describing the acreage contained in

each unit and the location of the well thereon. If there be separately owned or unitized tracts within the section upon which the well is located, such fact shall be shown. No unit shall be given an allowable until said statement is filed and approved by the Conservation Department or the Commission.

(e) Wells shall be drilled as nearly as practicable in the center of the unit, and in no event shall be farther from the center than 467 feet, except upon special order of the Commission after notice and hearing.

5. (a) Deliverability Factor—Pressure—The deliverability of each connected well in said pool shall be determined as follows: The well shall be produced into the pipeline for approximately seventy-two (72) hours, during which time the working pressure at the well-head shall be maintained at eighty per cent (80%) of the average shut-in well-head pressure of the field, expressed in pounds per square inch gauge and designated herein as the deliverability standard pressure, or as closely thereto as operating conditions in the pool will permit. In no case shall the working well-head pressure during the test be more than ninety per cent (90%) or less than seventy per cent (70%) of the shut-in well-head pressure of the well being tested unless it can be shown to the satisfaction of the Conservation Officer that it is impracticable to maintain the pressure within the above described limits and that the accuracy of the test will not be unduly affected by failure to do so. Flow shall be measured by approved meter throughout the 72-hour test period, and the well-head pressure shall be measured by dead weight gauge at the close of the test period. The rate at which the well is producing at the end of 72 hours shall be considered the stabilized producing rate corresponding to the working well-head pressure existing at that time, provided such rate is not greater than the average production rate for the entire 72-hour period. If the working well-head pressure at the close of the test is exactly equal to the deliverability standard pressure then the corresponding stabilized producing rate, expressed in MCP per day at a base temperature of sixty degrees (60°) Fahrenheit and a base pressure of two pounds (2#) above atmosphere assumed

to be 14.4# shall constitute the well's deliverability. If the well-head pressure at the end of the test is either greater or less than the deliverability standard pressure, the observed stabilized producing rate shall be converted to deliverability by use of the following formula:

$$D = R\left(\frac{(P^2 - Pd^2)}{(P^2 - Pw^2)}\right)^{.85}$$

Where D—Deliverability
R—Observed producing rate
P—Shut-in pressure of the well, pounds absolute
Pd—Deliverability standard pressure, converted to pounds absolute
Pw—Working well-head pressure at Rate P, pounds absolute

Shut-in well-head pressure shall be measured by dead weight gauge after the well has been shut in for approximately 72 hours. In no case shall the well have been shut in for less than 66 hours nor more than 78 hours at the time the shut-in pressure is taken. If the representative of the Commission should for any reason believe that the shut-in pressure taken upon a well is incorrect, he may require that such well be blown to clean fluids from the well bore, or take any such other reasonable steps that may be necessary to get a true pressure upon the well. In the event that more than one shut-in pressure is taken upon a well during the test period, the highest such shut-in pressure obtained will be used in figuring the deliverability of such well. The deliverability of each unconnected well which is recognized by the Commission as entitled to an allowable shall be estimated from its estimated capacity to produce considered in connection with the average relationship between the estimated capacity to produce and deliverability of all wells in the pool on which such tests have been made. When such well is connected to a pipeline its deliverability shall be redetermined by the method herein prescribed, and such allowable

shall be made retroactive to the date when the well was first entitled to an allowable.

(b) The deliverability of each well in the pool shall be determined by the Conservation Department between May 1 and September 30 of each year unless otherwise ordered by the Commission; provided that, all deliverability tests taken since May 1, 1944, are hereby approved by the Commission and shall be effective as of June 1, 1945, and until new tests are taken thereafter. Deliverability tests may be taken at such other times as may be agreed upon by all of the operators within the pool, with the approval of the Conservation Officer, or at any other time within the discretion of the Conservation Officer or upon order of the Commission. When any well is connected to a pipeline, its deliverability shall be determined by the Conservation Department.

(c) The Conservation Officer shall give written notice to each operator and producer in the pool of the taking of deliverability tests in sufficient time to have a representative present at the taking thereof. A written report of said tests, signed by the persons taking and witnessing the same, and approved by the Conservation Officer or his agent who took or supervised the same, shall be filed with the Commission, upon forms approved by it, which report shall be filed as soon as possible after the taking of the tests.

6. *Well Allowables*—(a) In order to determine the amount of gas that should be produced from each well for any allowable period, a pool allocation factor shall be determined by dividing the total anticipated production from the pool for such period by the sum of the product of deliverability times the acreage factor for all the wells in the pool; then multiply the pool allocation factor by the product of deliverability times the acreage factor for the well; the result reached by such calculation shall constitute the well's allowable in cubic feet for such allowable period; provided however, if at any time during any allowable period it appears to the Conservation Officer that the actual market demand is greater or less than the anticipated production as above set out, then the Conservation Department shall

immediately revise the allowable for the respective wells as set out in this paragraph. Acreage factor as used in this order shall mean the number of communitized acres in any unit. Allowable period as used in this order shall mean a calendar month.

(b) When a well is entitled to an allowable, the deliverability shall be determined and the operator shall meet all the requirements of this order, and when a well is entitled to an allowable during any allocation period it shall be given such allowable for the remainder of said period.

7. *Allowable Periods—Hearings*—There are hereby established two market demand periods for each year, one beginning April 1 and ending September 30 and the other beginning October 1 and ending March 31, inclusive; and a reasonable time before said periods the Commission will conduct a hearing for the purpose of receiving nominations and determining the monthly market demand and anticipated monthly production of gas for the period that can be produced without waste; and based upon such determination allocations to each well entitled to an allowable shall be made for each month by the Conservation Department, with the aproval of the Commission. If the market demand increases or decreases during said period, and the same can be produced without waste the Conservation Department shall change the allocations for the ensuing monthly period in accordance with such change, and shall report same to the Commission; and at the next regular hearing the allowables will be readjusted and approved by the Commission. The Commission reserves the right to conduct a hearing at any time it deems same advisable; and additional hearings may be called upon application of the Conservation Officer, Conservation Attorney, or any interested party.

8. *Underproduction and Overproduction*—All underproduction and overproduction occurring in any allowable period, as determined by the calculation of the allocation formula, shall be adjusted and carried as a credit in favor of the wells or a charge against them, as the case may be, and added to or subtracted from the well's allowable for

the next allowable period. When a well's overproduction equals three times its monthly current allowable, said well shall be immediately shut in by the operator and no gas produced therefrom until such overproduction is made up. In the event an operator refuses to shut in such well, the Conservation Officer is hereby directed to shut it in, place a seal thereon, and keep same shut in until the overage is made up. When a well connected to a pipeline or other market outlet has accumulated underage in excess of three times its current monthly allowable, it shall be canceled unless otherwise ordered by the Commission; provided that, where an operator has an allowable and is refused an outlet, the underproduction of such well shall not be canceled.

9. All purchasers, takers, and producers of gas in the pool shall comply with the common purchaser and ratable taking provisions of the Oklahoma statutes by the equitable purchasing, producing, and taking of all the gas without discrimination in favor of one producer as against another; and they shall not discriminate in favor of their own production, whether in price or amount, and producers and takers shall take from all wells which they can reach by their own line or by lines provided by the well owners ratably in accordance with the allocations to wells established by this order.

10. In establishing allowables after the effective date of this order, only that acreage owned by the lessee operating a well shall be considered in the acreage factor until such time as the owners of working interests in the unit agree on a method of pooling their interests and producing the well, or until the Commission by proper order has after notice and hearing issued a pooling order for the unit.

11. All monthly reports required by this order or any order of the Commission relating to the production of gas from the Guymon-Hugoton Pool shall be filed with the Conservation Department not later than the 5th day of the month succeeding the month in which the gas was produced.

12. Jurisdiction over this cause is hereby retained for the purpose of changing, modifying, adding to, or altering

this order, if at any further hearing or from other evidence adduced before the Commission it appears that such change, modification, addition or alteration should be made.

13. The several provisions of this order are separable, and the validity of any one is in nowise dependent upon the validity of any other. If any provision, section, paragraph, sentence, or clause hereof shall be held to be invalid or void for any reason, the same shall in no manner affect the validity of any other provision, section, paragraph, sentence, or clause of this order.

Done and Performed by the Corporation Commission at its offices in the Capitol Office Building, Oklahoma City, Oklahoma, this 31st day of May, 1945.

CORPORATION COMMISSION OF THE STATE OF OKLAHOMA,

REFORD BOND,
Chairman;

RAY O. WEEMS,
Vice-Chairman;

____ ____,
Commissioner.

Attest:

TOM MCMURRAY,
Secretary.

[SEAL.]

BEFORE THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA

Cause CD No. 983

Order No. 17867

In the Matter of the Application of WALKER T. POUND, Conservation Officer, for a Well Spacing Order and Rules and Regulations Governing Production and Ratable Taking of Natural Gas in the Guymon-Hugoton Field, Texas County, Oklahoma.

Report of the Commission

This cause came on for hearing before the Corporation Commission of the State of Oklahoma in its court room in the Capitol Office Building, Oklahoma City, Oklahoma, on the 24th day of May, 1945, at 10 o'clock A. M., upon the application filed by the Conservation Officer and pursuant to order of the Commission setting the same for hearing and notice published as required by law; at which hearing, Chairman Reford Bond and Commissioners Ray O. Weems and Wm. J. Armstrong sitting, Floyd Green, Conservation Attorney, appeared for the Conservation Department and the following appearances were made; Earl Pruet and Kelsey Hutchinson for Peerless Oil and Gas Company; R. C. Foulston, George M. Green and R. M. Rainey for Republic Natural Gas Company; Colin C. Rae for Skelly Oil Company; R. M. Williams and E. G. DeParade for Phillips Petroleum Company; Del Howard and Joe Rolston, Jr. for Cities Service Gas Company; Jarman and Jarman by Ed White for A. P. Gardner; and John Schoeppel for Waldo E. Stephens; whereupon evidence was presented in support of the application, and the Commission closed the case and took the matter under advisement.

Now, on this 31st day of May, 1945, the Commission, having considered all of the testimony and being otherwise fully advised in the premises, finds as follows:

Findings

1. That notice by publication of the filing of the application herein, the time and place of the hearing thereon, and the purpose of said hearing, has been regularly given in all respects as required by law, and the Commission has jurisdiction of the subject matter embraced in said application and of the parties interested therein, and jurisdiction to issue and promulgate and hereinafter prescribed order.

2. That the application in this cause requests the issuance of a spacing order in the Guymon-Hugoton Pool pursuant to the provisions of House Bill No. 257 of the Twentieth Session of the Oklahoma Legislature.

3. That under date of December 27, 1944, the Commission issued its Order No. 17410 in Cause C. D. No. 861, providing for the manner and method of determining the capacity of the wells to produce in said pool and the making of allocations to the wells, and the Conservation Department has been operating under said order since January 1st, 1945.

4. That the Hugoton Gas Field is located in the States of Oklahoma, Kansas, and Texas, and is one of the largest known gas reserves in the United States; that a large portion of said field lies within Texas County, Oklahoma, and has been named by this Commission the "Guymon-Hugoton Pool"; that the probable productive area of said pool is hereinafter more specifically described in this order.

That the Guymon-Hugoton Pool constitutes one common source of supply of gas, although there are three or more producing horizons that are interconnected, which are known as the Crider, Winfield, and Harrington horizons and are found at an approximate depth of 2810 feet; that an average thickness of the producing formation is 45 feet; that there are approximately 191 wells in said pool, of which approximately 156 are now producing and connected to pipe lines; that the virgin pressure in said pool was approximately 442 pounds, but at the present time it has been reduced to approximately 400 pounds; that total reserves are estimated at seven trillion cubic feet.

That the first gas well in said common source of supply was drilled in the year 1922; that several pipelines have been laid and several companies have interests in said pool and are now engaged in the drilling and production of gas wells or in the transmission of gas from said pool, or both.

7. That pressure differentials exist to some extent between the wells and leases in said field, which appears to be due primarily to the fact that some wells have been produced for a longer period and have produced more gas than others; which shows that there is some migration of gas from some leases to others, and unless action is taken by the Commission the differentials will increase and cause inequities due to drainage, and waste will result. It is common knowledge that gas in a formation migrates toward the wells that are on production and have the lowest pressure, and that drainage thus caused, which if not equalized by counterdrainage from other properties, results in disproportionate production by the wells on the respective properties.

8. That the Conservation Department has taken production tests at various times in said pool in compliance with Orders Nos. 16377 and 17410 heretofore issued by this Commission; that the most recent tests have been made in compliance with said Order No. 17410, which takes into consideration acreage and deliverability; that well allowables have been established for the producing wells in said pool, and said allowables are set out in Exhibits Nos. 6 and 7 introduced in evidence in this cause; that this order should become effective as of June 1, 1945, and Order No. 17410 should be inoperative as of said date.

9. That the full production of gas from wells in said pool is greatly in excess of the market demand and of the transportation and marketing facilities.

10. That in the years 1913 and 1915 the Legislature of the State of Oklahoma enacted laws governing the production and ratable taking of natural gas and prohibiting the waste thereof, and authorizing and directing the Corporation Commission to promulgate rules and regulations for

determination of the natural flow of wells and the taking of natural gas from the common sources of supply within the State so as to prevent waste, provide for ratable taking, and protect the interests of the public and all those having a right to produce therefrom; and the Commission was therein authorized and directed to give due regard to the acreage drained by each well in determining the amount of gas that should be produced from any common source of supply and fixing well allowables; such rules and regulations to give to each owner or lessee an opportunity to produce as nearly as possible all of the natural gas located in its original state under the property owned by him, and permit him to produce it ratably with other persons having an interest therein and wells located thereon; that in the years 1933 and 1935 the Legislature enacted additional statutes which pertain principally to oil production, but in general providing that production of oil and gas in such manner as to constitute waste is prohibited, and authorizing and directing the Corporation Commission to make and promulgate rules and regulations for the prevention of such waste.

11. That pursuant to said statutes the Corporation Commission in January 1945, adopted general rules and regulations providing for the taking of potentials and for ratable taking of gas, which were and are applicable to all gas fields in this State, being Order No. 17528; that because of special conditions obtaining in the Guymon-Hugoton Pool said rules and regulations are insufficient to carry out the objects of the laws as to gas production; and in order to prevent waste, insure ratable taking, protect the interests of the public and all parties interested therein, to prevent any lessee from securing an unfair proportion of the gas in said pool, and to give to each lessee and royalty owner an opportunity to recover the gas originally underlying the surface of the land owned by him, it is necessary to promulgate special rules and regulations for the Guymon-Hugoton Pool; that the provisions of the general Order No. 17528 should govern in all instances with the exception that in event of a conflict the special rules and regulations set out in this order should prevail.

12. That the allocation formula hereinafter set out in this order should be adopted by the Commission to permit each well to currently produce its ratable share of the gas and ultimately to produce the approximate amount originally underlying the lease, to protect the interests of the public and of all parties interested therein, and prevent waste; that in such formula many factors are considered, such as percentage of the well's capacity to produce, acreage, pressures, porosity, permeability, and thickness of the formation, of which average and percentage of capacity to produce are the most important; that in determining the ability of the well to put gas into a pipeline against pipeline pressure, which is known as deliverability, natural flow, pressure, porosity permeability, and thickness of the formation should be considered.

13. That it appears that one well in said pool will adequately drain 640 acres without waste; that all wells heretofore drilled have been in one section as laid out by the Governmental Survey; that drilling units should be established for said Guymon-Hugoton Pool which should contain not to exceed 640 acres within one Governmental section; provided however, that the short sections lying adjacent to the Oklahoma-Kansas State Line should be added to the unit immediately south of the short section, but in no event should any unit comprise more than 800 acres; that each well hereafter drilled should be located in the center of its unit or in any event not farther from the center than 467 feet; that in figuring allowables, if a unit contains more than 640 acres, that fact should be taken into consideration.

14. That the deliverability factor, hereinafter set out in this order, which takes into consideration each well's capacity to produce, porosity, permeability, pressures, thickness of the formation, and other factors, should be adopted in making allocations to wells in the pool.

15. That the establishment of the acreage and deliverability factors, as hereinafter set out in this order, is necessary for determination of well allowables, in order to prevent waste, protect the interests of the public and all persons interested in said common source of supply, and to

give to each producer and owner an opportunity to produce currently his proportionate part of the gas originally underlying his land.

16. That under Enrolled House Bill No. 257 enacted by the Twentieth Session of the Oklahoma Legislature, only one well may be drilled in any unit, and where there are divided or undivided interests, or both, in a unit, and they are unable to agree upon a pooling of their interests in the development of the unit, either or all of the interested parties may file an application with this Commission for a pooling order, and this Commission, after notice and hearing, shall issue an order that it fair and reasonable for all interested parties and that will insure to each and all of the interested parties their fair proportion of the gas underlying said unit; provided however, that in figuring and making allocations, until such time as the working interests of the various owners within a unit are pooled, only the acreage of the lessee owning and operating the well shall be taken into consideration.

17. That all of the royalty owners in a unit should participate in the proceeds of any well produced in the unit in the ratio that the acreage of the royalty owned bears to the total acreage of the unit.

18. That in determining allocations in said pool, only developed acreage should be considered, and developed acreage should mean the acreage within a unit on which there is a producing well with a market outlet, or the owner of which is ready, willing, and able to permit or to make a pipeline connection or deliver his gas to other market at the going price for gas in the field, and the allowable for such unconnected well should begin as hereinafter provided in this order.

19. That there should be two market demand periods each year, one beginning April 1 and ending September 30, and the other beginning October 1, and ending March 31, inclusive, with the idea of dividing the periods of high demand from those of lower demand; that the Commission will hold a hearing preceding each period, at which hearings the market demand and anticipated production of gas for each

month of the period will be determined by nominations from all purchasers and takers and estimates from producers, that can be produced without waste; that the Conservation Department will make monthly allocations to wells, and if the market demand or anticipated production that can be produced without waste, as determined by the Commission, is shown to have increased or decreased during any period, the Conservation Department may adjust allowables to conform thereto, subject to approval by the Commission at the next regular hearing; that the Commission may hold hearings in addition to those herein mentioned at any time it deems advisable.

20. That in applying the allocation formula, the Conservation Department will prepare schedules which set out the anticipated production from the field and the allowable for each well for each calendar month of the period; and underproduction and overproduction which may result from application of said formula will be adjusted as hereinafter specifically set out in this order.

21. That all of the rules and regulations adopted in this order are necessary to accomplish the objects and purposes of the laws of the State of Oklahoma in the production of gas from the Guymon-Hugoton Pool, to prevent waste, protect the interests of the public and of all those having a right to produce gas therefrom, provide for ratable taking, obtain a greater recovery, prevent drainage not offset by counter-drainage, and encourage future development.

It is the intention—*purpose and* policy of the Corporation Commission of the State of Oklahoma in issuing this order to promulgate rules and regulations as authorized and directed by the laws of the State of Oklahoma governing production of natural gas in order to prevent waste, providing a uniform method of determining a percentage of the well's capacity to produce, and for ratable taking of gas, in order to protect the interests of the public and all parties interested therein, and to give each operator an opportunity to produce currently his proportionate part of the gas and ultimately to produce approximately the amount of gas

originally underlying the surface of the land owned by him.

It is not the intention to limit or restrict the market demand for gas in the Guymon-Hugoton pool, but only to restrict production to market demand and prorate production equitably and fairly among the producers and owners.

It is further the intention of the commission that that portion of the Hugoton Field in the State of Oklahoma be referred to as the Guymon Hugoton Pool.

Order

It is therefore ordered by the Corporation Commission of the State of Oklahoma as follows:

1. This order shall supersede Order No. 17410 issued by the Commission on the 27th day of December, 1944, in Cause CD No. 861, and shall be effective as of June 1, 1945, for the drilling and production of wells and the taking and transportation of natural gas in the Guymon-Hugoton Pool.

2. Drilling and/or spacing units, 640 acres in size consisting of one section according to the United States Governmental Survey, are hereby established for the development of the Guymon-Hugoton Pool located in Texas County, State of Oklahoma, the probable productive area of which covers parts of the following described townships, to-wit:

Township One (1) North, Ranges Twelve (12) to Seventeen (17) East;

Townships Two (2), Three (3), and Four (4) North, Ranges Twelve (12) to Eighteen (18) East; and

Townships Five (5) and Six (6) North, Ranges Twelve (12) to Nineteen (19) East of the Cimarron Meridian,

which area may be extended by the drilling of additional wells, it being the intention to cover all of the productive area of said common source of supply, and any wells drilled into said common source of supply outside the area above

described shall be drilled in the manner and according to the pattern herein described.

The short sections lying adjacent to the Kansas-Oklahoma State Line shall be added to and made a part of the unit immediately to the south of the short section, but in no event shall any unit comprise more than 800 acres.

Each well hereafter drilled in said pool shall be drilled in the center of its unit, and in no event farther than 467 feet from the center of the unit, which shall apply to the units comprising the short sections herein mentioned; provided that, an exception is hereby allowed for the five or six wells heretofore drilled to points other than the center of their units, which wells shall be treated as the well for its unit and no additional well shall be drilled therein.

3. *Allocation Formula*—A formula shall be, and is hereby adopted for the purpose of allocating gas production to the wells in the pool, which formula shall consist of acreage and deliverability factors, as herein defined; and said formula shall be applied as herein set out.

4. *Acreage Factor*— (a) The acreage factor in said pool to be used in the allocation formula shall be 640 acres, and in no event more than 800 acres, as provided in paragraph 2 hereof.

(b) In determining the units herein prescribed, for the purpose of allocation of gas production, only developed acreage shall be considered; and developed acreage shall mean any unit on which there is a producing well having a pipeline connection or other market outlet or the owner or operator of which is ready, willing, and able to permit or to make a connection and dispose of his gas at the going price in the field. If the operator or owner, by affidavit or otherwise, shows to the Conservation Officer that he is ready, willing, and able to permit or to make a connection and the pipeline or other outlet refuses to take his gas, then his acreage shall be deemed developed acreage under this order. Before any unconnected well shall be granted an allowable, the operator shall tender its gas production to a purchaser by registered mail, and copy of said letter of tender shall be sent to the Conservation Officer. If at the

end of thirty days no connection has been made and the Conservation Officer is satisfied that the operator has made such tender in good faith, then the Conservation Officer shall fix an allowable for said well to commence at the end of such thirty-day period; provided further, when there is no dispute between the seller and the purchaser, the producer or the purchaser shall file an affidavit on a form prescribed by the Commission, showing the date the well was connected and actual production was commenced, on which date the allowable shall be fixed for said well.

(c) When there are divided or undivided interests, or both, within any spacing unit and the owners of such interests are unable to agree upon a pooling of their interests in producing the unit, then the rights and obligations of such parties shall be determined by the Commission as provided in Section 4 of Enrolled House Bill No. 257 enacted by the Twentieth Session of the Legislature of Oklahoma, which by reference is made a part hereof as fully as if set out herein. Likewise any interested royalty owner and any party at interest shall have the right to apply to the Commission for a pooling order to enforce the pooling of all interests within the unit.

(d) Each operator shall file a sworn statement with the Oil and Gas Conservation Department, on a form approved by the Commission, describing the acreage contained in each unit and the location of the well thereon. If there be separately owned or unitized tracts within the section upon which the well is located, such fact shall be shown. No unit shall be given an allowable until said statement is filed and approved by the Conservation Department or the Commission.

(e) Wells shall be drilled as nearly as practicable in the center of the unit, and in no event shall be farther from the center than 467 feet, except upon special order of the Commission after notice and hearing.

5. (a) *Deliverability Factor—Pressure*—The deliverability of each connected well in said pool shall be determined as follows: The well shall be produced into the pipeline for approximately seventy-two (72) hours, during which time the working pressure at the well-head shall be maintained

at eighty per cent (80%) of the average shut-in well-head pressure of the field, expressed in pounds per square inch gauge and designated herein as the deliverability standard pressure, or as closely thereto as operating conditions in the pool will permit. In no case shall the working well-head pressure during the test be more than ninety per cent (90%) or less than seventy per cent (70%) of the shut-in well-head pressure of the well being tested unless it can be shown to the satisfaction of the Conservation Officer that it is impracticable to maintain the pressure within the above described limits and that the accuracy of the test will not be unduly affected by failure to do so. Flow shall be measured by approved meter throughout the 72-hour test period, and the well-head pressure shall be measured by dead weight gauge at the close of the test period. The rate at which the well is producing at the end of 72 hours shall be considered the stabilized producing rate corresponding to the working well-head pressure existing at that time, provided such rate is not greater than the average production rate for the entire 72 hour period. If the working well-head pressure at the close of the test is exactly equal to the deliverability standard pressure, then the corresponding stabilized producing rate, expressed in MCF per day at a base temperature of sixty degrees (60°) Farenheit and a base pressure of two pounds (2#) above atmosphere assumed to be 14.4# shall constitute the well's deliverability. If the well-head pressure at the end of the test is either greater or less than the deliverability standard pressure, the observed stabilized producing rate shall be converted to deliverability by use of the following formula:

$$D = \frac{R \ (P^2 - Pd^2) \ .85}{(P^2 - Pw^2)}$$

Where D —Deliverability
R —Observed producing rate
P —Shut-in pressure of the well, pounds absolute
Pd—Deliverability standard pressure, converted to pounds absolute
Pw—Working well-head pressure at rate R, pounds absolute.

Shut-in well-head pressure shall be measured by dead weight gauge after the well has been shut in for approximately 72 hours. In no case shall the well have been shut in for less than 66 hours nor more than 78 hours at the time the shut-in pressure is taken. If the representative of the Commission should for any reason believe that the shut-in pressure taken upon a well is incorrect, he may require that such well be blown to clean fluids from the well bore, or take any such other reasonable steps that may be necessary to get a true pressure upon the well. In the event that more than one shut-in pressure obtained will be used in figuring the deliverability of such well. The deliverability of each unconnected well which is recognized by the Commission as entitled to an allowable shall be estimated from its estimated capacity to produce considered in connection with the average relationship between the estimated capacity to produce and deliverability of all wells in the pool on which such tests have been made. When such well is connected to a pipeline its deliverability shall be redetermined by the method herein prescribed, and such allowable shall be made retroactive to the date when the well was first entitled to an allowable.

(b) The deliverability of each well in the pool shall be determined by the Conservation Department between May 1 and September 30 of each year unless otherwise ordered by the Commission; provided that, all deliverability tests taken since May 1, 1944, are hereby approved by the Commission and shall be effective as of June 1, 1945, and until new tests are taken thereafter. Deliverability tests may be taken at such other times as may be agreed upon by all of the operators within the pool, with the approval of the Conservation Officer, or at any other time within the discretion of the Conseravtion Officer or upon order of the Commission. When any well is connected to a pipeline, its deliverability shall be determined by the Conservation Department.

(c) The Conservation Officer shall give written notice to each operator and producer in the pool of the taking of deliverability tests in sufficient time to have a representa-

tive present at the taking thereof. A written report of said tests, signed by the persons taking and witnessing the same, and approved by the Conservation Officer or his agent who took or supervised the same, shall be filed with the Commission, upon forms approved by it, which report shall be filed as soon as possible after the taking of the tests.

6. *Well Allowables*—(a) In order to determine the amount of gas that should be produced from each well for any allowable period, a pool allocation factor shall be determined by dividing the total anticipated production from the pool for such period by the sum of the product of deliverability times the acreage factor for all the wells in the pool; then multiply the pool allocation factor by the product of deliverability times the acreage factor for the well; the result reached by such calculation shall constitute the well's allowable in cubic feet for such allowable period; provided however, if at any time during any allowable period it appears to the Conservation Officer that the actual market demand is greater or less than the anticipated production as above set out, then the Conservation Department shall immediately revise the allowable for the respective wells as set out in this paragraph. Aereage factor as used in this order shall mean the number of communitized acres in any unit. Allowable period as used in this order shall mean a calendar month.

(b) When a well is entitled to an allowable, the deliverability shall be determined and the operator shall meet all the requirements of this order, and when a well is entitled to an allowable during any allocation period it shall be given such allowable for the remainder of said period.

7. *Allowable Periods—Hearings*—There are hereby established two market demand periods for each year, one beginning April 1st and ending September 30th and the other beginning October 1, and ending March 31st, inclusive; and a reasonable time before said periods the Commission will conduct a hearing for the purpose of receiving nomina-

tions and determining the monthly market demand and anticipated monthly production of gas for the period that can be produced without waste; and based upon such determination allocations to each well entitled to an allowable shall be made for each month by the Conservation Department, with the approval of the Commission. If the market demand increases or decreases during said period, and the same can be produced without waste, the Conservation Department shall change the allocations for the ensuing monthly period in accordance with such change, and shall report same to the Commission; and at the next regular hearing the allowables will be readjusted and approved by the Commission. The Commission reserves the right to conduct a hearing at any time it deems same advisable; and additional hearings may be called upon application of the Conservation Officer, Conservation Attorney, or any interested party.

8. *Underproduction and Overproduction*—All underproduction and overproduction occurring in any allowable period, as determined by the calculation of the allocation formula, shall be adjusted and carried as a credit in favor of the wells or a charge against them, as the case may be, and added to or subtracted from the well's allowable for the next allowable period. When a well's overproduction equals three times its monthly current allowable, said well shall be immediately shut in by the operator and no gas produced therefrom until such overproduction is made up. In the event an operator refuses to shut in such well, the Conservation Officer is hereby directed to shut it in, place a seal thereon, and keep same shut in until the overage is made up. When a well connected to a pipeline or other market outlet has accumulated underage in excess of three times its current monthly allowable, it shall be cancelled unless otherwise ordered by the Commission; provided that, where an operator has an allowable and is refused an outlet, the underproduction of such well shall not be cancelled.

9. All purchasers, takers, and producers of gas in the pool shall comply with the common purchaser and ratable

taking provisions of the Oklahoma statutes by the equitable purchasing, producing, and taking of all the gas without discrimination in favor of one producer as against another; and they shall not discriminate in favor of their own production, whether in price or amount, and producers and takers shall take from all wells which they can reach by their own line or by lines provided by the well owners ratably in accordance with the allocations to wells established by this order.

10. In establishing allowables after the effective date of this order, only that acreage owned by the lessee operating a well shall be considered in the acreage factor until such time as the owners of working interests in the unit agree on a method of pooling their interests and producing the well, or until the Commission by proper order has after notice and hearing issued a pooling order for the unit.

11. All monthly reports required by this order or any order of the Commission relating to the production of gas from the Guymon-Hugoton Pool shall be filed with the Conservation Department not later than the 5th day of the month succeeding the month in which the gas was produced.

12. Jurisdiction over this cause is hereby retained for the purpose of changing, modifying, adding to, or altering this order, if at any further hearing or from other evidence adduced before the Commission it appears that such change, modification, addition, or alteration should be made.

13. The several provisions of this order are separable, and the validity of any one is in nowise dependent upon the validity of any other. If any provision, section, paragraph, sentence, or clause hereof shall be held to be invalid or void for any reason, the same shall in no manner affect the validity of any other provision, section, paragraph, sentence, or clause of this order.

Done and performed by the Corporation Commission at its offices in the Capitol Office Building, Oklahoma City, Oklahoma, this 31st day of May, 1945.

CORPORATION COMMISSION OF THE STATE OF OKLAHOMA
REFORD BOND, *Chairman,*
RAY O. WEEMS, *Vice-Chairman,*
——— ———, *Commissioner.*

Attest:
TOM. MCMURRAY,
Secretary. [SEAL.]

Leave is hereby granted to file the foregoing Orders In Cause #32,123 as a part of the Record thereof this 1st May, 1947.

THURMAN S. HURST,
Chief Justice.

APPENDIX "B"

[Stamp:] Filed in Supreme Court of Oklahoma Feb. 18, 1947. Andy Payne, Clerk.

Order Correcting Opinion.
See Order Attached.

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

No. 32123

REPUBLIC NATURAL GAS COMPANY, a corporation, Plaintiff in Error,

vs.

STATE OF OKLAHOMA, Corporation Commission of the State of Oklahoma, and Peerless Oil and Gas Company, a corporation, Defendants in Error

SYLLABUS

1. S. L. 1913, Ch. 198, Sec. 3 (52 O. S. 1941, 233) providing for the ratable taking of gas from a common re-

servoir or source of supply, is not in irreconcilable conflict with, or superseded by the provisions of S. L. 1915, Ch, 197 (52 O. S. 1941, 236-47) prohibiting waste of natural gas, and was not repealed by the enactment of said 1915 Act.

2. Where a foreign corporation obtains permission to do business within the State of Oklahoma, and pursuant to such permission enters the state and produces and transports natural gas therein, it may not successfully contend that a statute, relating to its operations, in full force and effect at the time it obtained permission to do business within the state is unconstitutional, and that an order of the Corporation Commission made pursuant to authority granted by such statute is void.

3. Record examined, and held that the order of the Corporation Commission requiring Republic Natural Gas Company to take ratably from a well of Peerless Oil and Gas Company producing from the same common source of supply, or to cease the production of gas from said common source of supply through its own wells, was not arbitrary or beyond the jurisdiction of the Commission.

APPEAL FROM AN ORDER OF THE CORPORATION COMMISSION OF OKLAHOMA

Affirmed: Rainey, Flynn, Green and Anderson, Oklahoma City; Robert C. Foulston, George Siefkin, Wichita, Kansas.

For Plaintiff in Error: Ross Rizley, of Guymon of counsel; Richardson, Shartel, Cochran & Pruet, Oklahoma City; Floyd Green, Attorney for Corporation Commission.

For Defendants in Error: Earl Foster, Oklahoma City, Amicus Curiae.

OSBORN, *J*:

This is an appeal by Republic Natural Gas Company from an order of the State Corporation Commission, entered on January 10, 1945, requiring Republic to take gas ratably from a well of Peerless Oil and Gas Company in the Hugoton Gas Field in Texas County. In this court on such appeal Republic assails the validity of the order,

and of the statutes upon which it is based, upon various grounds hereinafter more fully stated.

Peerless, in this court, moves to dismiss the appeal on the ground that Republic, by making a tender for sale of gas produced from its leases in the Hugoton field, has recognized the validity of the statutes and the previous orders made by the Commission governing the producing and taking of gas from the Hugoton field and is, therefore, estopped now to deny the right of the Commission to make the present order, and for the further reason that no motion for a new trial was filed before the Corporation Commission within three days after the order involved in this appeal was entered.

We see nothing in the tender of gas made by Republic which estops or precludes it from asserting the invalidity of the order appealed from, or of the statute, if it may be so construed as to authorize such order. In the previous orders of the Commission governing the production and taking of gas from the Hugoton field the amount of gas to be produced from the wells in that field to supply the market demand was fixed and allocated with as much certainty as the Commission was able to do so, but neither expressly nor by inference was any requirement made upon Republic to take gas from any wells except its own. Recognition of the Commission's right to make such orders and the production and sale of its gas thereunder in no way recognizes the right of the Commission to require it to take gas from the wells of the other producers.

Nor was the filing of a motion for new trial necessary to preserve to Republic the right of appeal. Holzierlein v. State —— Okla. ——, 172 P. 2d 1007.

The motion to dismiss is denied.

Proceeding now to consider the appeal on its merits, we briefly summarize the facts established by the evidence adduced before the Commission, upon which its findings and order were predicated. From the evidence it appears that the Hugoton Gas Field, not yet fully defined, covers a territory some 150 miles in length and 50 miles in width, extending from the southern part of the State of Kansas into Oklahoma and Texas, and possibly into Colorado

and New Mexico; that practically all of Texas County, Oklahoma, is embraced within the area of the field, which produces enormous quantities of gas far in excess of the market demand therefor; that at the time of the hearing before the Commission some 100 wells had been drilled into said field in Oklahoma, and that numerous wells had been drilled into it in the southern part of Kansas; that Republic had drilled some 92 wells in the Kansas Portion of the field and some 38 in the Oklahoma portion, and that additional wells were being drilled into the field in considerable numbers; that Republic, under contract with two pipe lines supplying gas for public consumption, one of which is within the State of Oklahoma, had constructed a pipe line gathering system of large size extending from its main outlet in the state of Kansas into Texas County, Oklahoma, whereby a portion of the production from its wells was transported to its markets in Oklahoma and Kansas; that by its principal contract it was required to maintain an open flow of gas production of more than four times in excess of the daily needs of the purchaser, and that Republic had available a supply of gas largely in excess of such requirement. It further appeared that there was no connection through stock ownership or otherwise between Republic and the pipe line outlets purchasing its gas. Republic drilled its first wells in Texas County, Oklahoma, in 1937, and has since that time been continuously engaged in the drilling of additional wells and in extending and enlarging its pipe line system to take care of the production from such wells. It has at no time held itself out as, or purported to be, a common purchaser or common carrier of gas, nor has it transported gas from any wells other than its own, except that under request of the Petroleum Administrator for War, it carried in its pipe lines, free of charge, gas from certain producing wells which the Petroleum Administrator required it to transport as a pre-requisite to permitting it to drill additional wells of its own. It also transports the gas of its royalty owners under its leases, which require it to pay as royalty 1/8 of the proceeds of the sale of gas.

The well of Peerless is located in Section 14, Township 6 North, Range 15 East, in the northern part of Texas

County. Under previous orders of the Commission only one well could be drilled upon each section. The Peerless well was completed as a producer on April 28, 1944, and produces gas in commercial quantities. It is almost surrounded by wells owned and operated by Republic which, according to the testimony of all the expert witnesses who testified on the subject, are draining from under the Peerless lease large quantities of gas which could be produced from it, and for which Peerless and its royalty owners would receive payment if such gas could be marketed by Peerless. For the gas so drained from under the Peerless lease by the surrounding wells Peerless and its royalty owners, of course, receive nothing, the revenue derived therefrom, which is not susceptible of definite ascertainment or apportionment, being received by Republic and the royalty owners upon whose leases its surrounding wells are located. From the evidence it appears that all of the gas production from the wells in the Hugoton field in Oklahoma is from the same common source of supply, and that to a certain extent the lease upon which the Peerless well is located is, therefore, drained by other wells in the field, but that such drainage by the nearby wells of Republic, which are much closer to the Peerless well than any other wells in the field.

From the evidence it appears that the present needs of Republic do not require the full capacity of its pipe line gathering system, and that a line of said system 8 inches in diameter crosses Section 14, upon which the well of Peerless is located, a short distance from said well. It also appears that Republic does not take from its producing gas wells any gas in excess of its determined allowable, as fixed by the Corporation Commission.

The Corporation Commission, after a full hearing, found the Republic had drilled numerous wells in the Hugoton Field in Oklahoma; that it had constructed pipe lines from these wells to its main pipe line, which main pipe line extended some 25 or 30 miles to a connection in Kansas, where it sold its gas to a common purchaser and common carrier of gas, and that it also sold a part of its gas to another common purchaser, the Cities Service Gas Company, at a point within the State of Oklahoma; that one of its

gathering lines across the land upon which the Peerless well was drilled, and that Republic had several wells on leases adjoining the land on which the Peerless well was drilled, which were draining gas from under the land covered by the Peerless lease, and that the production of natural gas in the Hugoton field was in excess of market demand.

The Commission found that Republic was a common purchaser of natural gas in the Hugoton field; that it was a common carrier of natural gas in said field, and further found that its taking of gas from the Hugoton field was not for the purpose of developing a gas and oil field, or operating oil wells or for the purpose of its own domestic use, and that it was therefore its duty, under S. L. 1913, Ch. 198, Sec. 3, (52 O. S. 1941, Sec. 233), to take ratably from Peerless, and that it had refused to do so.

By its order it required Republic to make connection with the Peerless well; that Peerless should lay a line from its well to Republic's line at some point designated by Republic, in Section 14, upon which the Peerless well was located; and that if it failed to make such connection and take gas from the Peerless well within a reasonable time after Peerless had constructed its line, as aforesaid, Republic should no longer be permitted to produce any of its wells located in the Hugoton Gas Field, in Oklahoma. It required Republic and Peerless to determine and agree upon the terms and conditions of the taking of the gas of Peerless by Republic, and provided that in the event they could not reach an agreement they could make further application to the Commission for an order fixing such terms and conditions, and the Commission retained jurisdiction for that purpose.

Republic contends that the finding that it was a common purchaser of gas and the finding that it was a common carrier are erroneous and not supported by the evidence, since the evidence does not show that it holds itself out as a common carrier or common purchaser, or had ever offered to purchase gas from, or carry gas for any other person or the public generally.

We think it unnecessary to pass upon this contention, since from the record it clearly appears that the finding of

the Commission that 52 O. S. 1941, sections 232 and 233, being sections 2 and 3 of Ch. 198 of S. L. 1913, are applicable to the situation here involved, is fully sustained by the undisputed evidence, and we are of opinion that by said sections the Commission was empowered to require Republic to take ratably from the Peerless well.

52 O. S. 1941, sections 232 and 233 read as follows:

Section 232.

"Any owner, or oil and gas lessee, of the surface, having the right to drill for gas shall have the right to sink a well to the natural gas underneath the same and to take gas therefrom until the gas under the surface is exhausted. In case other parties, having the right to drill into the common reservoir of gas, drill a well or wells into the same, then the amount of gas each owner may take therefrom shall be proportionate to the natural flow of his well or wells to the natural flow of the well or wells of such other owners of the same common source of supply of gas, such natural flow to be determined by any standard measurement at the beginning of each calendar month; provided, that not more than twenty-five per cent of the natural flow of any well shall be taken, unless for good cause shown, and upon notice and hearing the Corporation Commission may, by proper order, permit the taking of a greater amount. The drilling of a gas well or wells by any owner or lessee of the surface shall be regarded as reducing to possession his share of such gas as is shown by his well."

Section 233.

"Any person, firm of corporation, taking gas from a gas field, except for purposes of developing a gas or oil field, and operating oil wells, and for the purpose of his own domestic use, shall take ratably from each owner of the gas in proportion to his interest in said gas, upon such terms as may be agreed upon between said owners and the party taking such, or in case they cannot agree at such a price and upon such terms

as may be fixed by the Corporation Commission after notice and hearing; provided, that each owner shall be required to deliver his gas to a common point of delivery on or adjacent to the surface overlying such gas."

So far as we have been able to find that court has never been called upon to construe and apply the provisions of these sections. However, we have had occasion to consider similar situations under other conditions and other statutes. Oklahoma Natural Gas Corporation *v.* Corporation Commission, 161 Okla. 104, 17 P. 2d 488; Quinton Relief Oil & Gas Co. *v.* Corporation Commission, 101, Okla. 164, 224 P. 156. The language of Section 233 is plain and unambiguous. The evident purpose is to enforce ratable taking in accordance with the principles announced in Ohio Oil Co. *v.* Indiana, 177 U. S. 190. 44 L. Ed. 729, 20 Sup. Ct. 576. By the preceding section (52 O. S. 1941, 232) ratable taking is definind as the proportion which the natural flow of gas from the wells of one producer bears to the amount of the natural flow from the wells of the other owners producing from the same common source of supply or common reservoir.

The evidence before the Commission indisputably established that the gas from the Hugoton field by Republic was not taken for the purposes of developing a gas or oil field, or operating oil wells, or for its own domestic use, but was taken solely for the transportation and sale thereof to common purchasers and common carriers of gas in order that by such transportation and sale Republic might derive a profit, such profit being its sole source of income so far as the record discloses.

Republic does not contend that it is taking ratably from the Peerless well nor does it contend that its surrounding wells do not drain the Peerless well. It, in effect, concedes that it would be required to take ratably from the Peerless well if said section 233 was now in force and effect, but contends that the 1913 law of which said section is a part was superseded by S. L. 1915, Ch. 197, (52 O. S. 1941, sections 236-247).

Republic, in support of its contention that the 1913 Act was repealed and superseded by the 1915 Act, relies upon Application of Jackson, 179 Okla. 577, 66 P. 1101, and Sheridan Oil Co. *v.* Wall, 187 Okla. 398, 103 P. 2d 507. In Application of Jackson, supra, we held that Section 1, Art. 2, Ch. 26 S. L. 1909 providing for the prevention of waste of natural gas by shutting in and confining the gas until such time as it could be utilized for light, fuel, or power purposes, was superseded by Ch. 197, S. L. 1915, supra, for the reason that the latter Act plainly showed that it was intended as a substitute for the prior Act, but, in that case we said that the repeal only affects those provisions shown to have been substituted by later and more comprehensive provisions, and that the remaining provisions of the 1909 Act could be construed in harmony with the 1915 Act to effect the intention of the legislature on the subject of conservation.

In Sheridan Oil Co. *v.* Wall, supra, we held that Section 11581 O. S. 1931, relating to the plugging of oil wells under the supervision of the Chief Mine Inspector was superseded by Section 3671 O. S. 1931, which granted to the Corporation Commission exclusive jurisdiction over the plugging of oil and gas wells. We there held that there was an irreconcilable conflict between the two sections and that the section vesting the power in the Corporation Commission being a later enactment, it was evident that the legislature intended to confer upon the Commission power and authority to supervise the plugging of oil and gas wells unhampered by the prior law.

The decisions in the two cases cited do not support the contention of Republic. Examination of Ch. 198 S. L. 1913, supra, discloses that it was enacted primarily to enforce ratable taking and protect correlative rights. Ch. 197 S. L. 1915 was enacted primarily for the prevention of waste, and authorizes the Commission to enforce ratable taking not only to prevent waste but to protect the interests of the public, and of all having the right to produce from a common source of supply. 52 O. S. 1941, section 239.

While the 1915 Act contains provisions regulating the ratable taking of gas from a common source of supply by persons engaged in the business of purchasing and selling gas and making such persons common purchasers, it is evi-

dence that the above quoted provisions of the 1913 law go further and require one who is engaged in the business of producing, transporting and selling gas to take ratably from other producers from the same common reservoir who have no outlet for their production, regardless of whether the party so transporting and selling his own gas be a common carrier or common purchaser of gas from that reservoir.

In Champlin Refining Co. *v.* United States, — U. S. —, 91 L. Ed. 9, 67 Sup. Ct. Rep. 1, the Supreme Court of the United States held that under section 19(a) of the Interstate Commerce Act, the Interstate Commerce Commission would lawfully require the Champlin Refining Company to furnish information as provided in said section, although it was not a common carrier or common purchaser, but transported only its own products through its pipe line from one state to another. This holding by the Supreme Court was based upon a provision in the Interstate Commerce Act that the term common carrier as used therein included all pipe line companies. This case supports the contention of Peerless, upheld by the Corporation Commission that the above quoted sections of the 1913 Act extended the obligation to take ratably to include another class besides common purchasers and common carriers. No similar provision is contained in the 1915 Act, nor is such provision in irreconcilable conflict with anything therein contained.

It is also significant that both the 1913 Act and the 1915 Act were brought forward in the 1921 Code, the 1931 Code, and the 1941 Code, so that it is apparent that the legislature in adopting the 1941 Code did not consider the 1913 law superseded by the 1915 law.

It follows that under Section 3 of the 1913 law above quoted the Commission could require the Republic to take gas ratably from the Peerless well, by ordering it to take from the Peerless well the same proportion of gas which it was taking from its own wells having substantially the same natural flow, or in the alternative, desist from selling gas from its own producing wells.

In support of its contention that if the 1913 law was not superseded by the 1915 law, the 1913 law is unconstitutional as depriving it of its property without due process of law,

Republic relies upon Texoma Natural Gas Co. *v.* Railroad Commission of Texas, 59 Fed. 2d 750, and Thompson *v.* Consolidated Gas Utilities Co., 300 U. S. 55, 81 L. Ed. 510, but in each of those cases the Conservation Act stricken down as unconstitutional, was enacted long after the parties who were there required to take gas from the wells of others had entered the state and made contracts for the production and purchase of natural gas. This fact distinguishes them from the instant case, and in our judgment, deprives them of controlling force.

In the instant case the record discloses that both the 1913 and 1915 Acts were enacted long prior to the time that Republic, a foreign corporation, obtained the privilege of conducting its business operations within the state and engaged in such business and entered into its various contracts. Having entered this state and obtained the privilege of conducting its business operations therein when said laws were in full force and effect, it consented to be bound by such laws, and may not now complain that an order entered by the Commission within the scope of such laws is unconstitutional. Pierce Oil Corporation *v.* Phoenix Refining Co., 259 U. S. 125, 66 L. Ed. 855, 42 Sup. Ct. Rep. 440.

In that case the Supreme Court, passing upon a similar contention held:

> "A claim so similar to the one we have here that the disposition of it should have been accepted as disposing of this case was dealt with by this court in Pipe Line Cases, 234 U. S. 548, 561, in a single sentence, saying: 'So far as the statute contemplates future pipe lines and prescribes conditions upon which they may be established there can be no doubt that it is valid.'
>
> There is nothing in the nature of such a constitutional right as is here asserted to prevent its being waived or the right to claim it barred, as other rights may be, by deliberate election or by conduct inconsistent with the assertion of such a right. Pierce *v.* Somerset Railway, 171 U. S. 641, 648; Wall *v.* Parrot Silver & Coper Co., 244 U. S. 407, 411."

Republic contends that the order invades the field of federal cognizance and interferes with and burdens commerce between the states, contrary to Art. 1, section 8 of the Federal Constitution, citing Texoma Natural Gas *v.* Railroad Company of Texas, supra. Assuming without deciding that in some instances such an order might burden commerce between the states, there is here no showing that such effect will be produced by the order here appealed from. The evidence shows that Republic is delivering gas to a common purchaser within the State of Oklahoma. There is no showing that the order of the Commission will in any way operate to restrict, hamper or interfere with any interstate operations of Republic, or that the order may not be complied with by operations conducted solely within the State of Oklahoma.

Republic asserts that the order made by the Commission is arbitrary and beyond the jurisdiction of the Commission, and that its effect is to require Republic to become a common purchaser of gas in the Hugoton field.

We think these assertions are not sustained either by the law or by the facts.

By 52 O. S. 1941, section 239, the Corporation Commission is given the right to regulate the taking of natural gas from any common source of supply so as to protect the interests of all those having the right to produce therefrom. This provision vested in the Corporation Commission power and authority to enforce ratable taking under the provisions of section 233, supra. The record shows that the Commission had theretofore made a general order fixing allowables and governing the taking of gas from said field, and obviously the present order, made after notice and a full hearing, was for the purpose of correcting an inequality in the taking of gas from said field whereby the correlative rights of Peerless were being infringed. Under the evidence and the authority granted by section 233, supra, the order was justified and was not an arbitrary act of the Commission, nor beyond its power and jurisdiction.

Neither did the order require Republic to become a common purchaser, since it gave Republic a choice between taking the gas from Peerless and paying therefor direct, or marketing the gas and accounting to Peerless therefor,

or to shut in its own production from the same common source of supply. It was left free to choose either of these three methods of correcting the inequality in taking and the consequent infringement of the correlative rights of Peerless.

The order of the Commission is affirmed.

Hurst, C. J., Davison, V. C. J., Riley, Bayless, Welch, Corn, Gibson, and Arnold, JJ.: concur.

Filed in Supreme Court of Oklahoma, May 25, 1947. Andy Payne, Clerk

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

No. 32123

REPUBLIC NATURAL GAS COMPANY, a Corp., *Plaintiff in Error*,

vs.

STATE OF OKLAHOMA, et al., *Defendants in Error*

ORDER

It is ordered that the second paragraph of the syllabus in the above styled cause be corrected to read as follows:

> "Where a foreign corporation obtains permission to do business within the state of Oklahoma, and pursuant to such permission enters the state and produces and transports natural gas therein, it may not successfully contend that a statute, relating to its operations, and applying alike to both domestic and foreign corporations, in full force and effect at the time it obtained permission to do business within the state is unconstitutional, and that an order of the Corporation Commission made pursuant to authority granted by such statute is void."

Done by order of the conference this 24th day of March, 1947.

THURMAN S. HURST,
Chief Justice.

APPENDIX "C"

No. 32123

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

REPUBLIC NATURAL GAS COMPANY, a Corporation, *Plaintiff in Error,*

vs.

STATE OF OKLAHOMA, CORPORATION COMMISSION OF THE STATE OF OKLAHOMA, and PEERLESS OIL AND GAS COMPANY, a Corporation, *Defendant in Error*

PETITION FOR REHEARING

RAINEY, FLYNN, GREEN & ANDERSON,
735 First National Building,
Oklahoma City, Oklahoma;
ROBERT C. FOULSTON,
GEORGE SIEFKIN,
Wichita, Kansas,
Attorneys for Plaintiff in Error.

ROSS RIZLEY,
Guymon, Oklahoma,
Of Counsel.

March, 1947.

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No. 32123

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

REPUBLIC NATURAL GAS COMPANY, a Corporation, *Plaintiff in Error*,

versus

STATE OF OKLAHOMA, CORPORATION COMMISSION OF THE STATE OF OKLAHOMA, and PEERLESS OIL AND GAS COMPANY, a Corporation, *Defendants in Error*

PETITION FOR REHEARING

Comes now Republic Natural Gas Company, a corporation, plaintiff in error herein and petitions this Court to grant it a rehearing from the decree and judgment rendered by this Court on the 18th day of February, 1947, in this cause, affirming Order No. 17463, in cause No. 902 of the Corporation Commission of Oklahoma, entered on January 10, 1945, requiring plaintiff in error to take gas from a well of Peerless Oil and Gas Company in the Hugoton Gas Field in Texas County, Oklahoma.

As grounds for rehearing, plaintiff in error says that said decision and judgment is in conflict with controlling decisions to which the attention of the Court has not been called in this case, either in brief or oral argument, and is also in conflict with decisions which have been overlooked by this Court.

Plaintiff in error, in its petition in error and in its brief and oral argument herein, asserted that Chapter 198, Session Laws 1913, as construed and applied by the Corporation Commission denies it the equal protection of the law and deprives it of its property without due process of law in violation of the Fourteenth Amendment to the Constitution of the United States and of Sections 7 and 23 of Article 2 of the Constitution of the State of Oklahoma. In support of such contention plaintiff in error relied upon the cases of: Texoma Natural Gas Co. *v.* Railroad Commission of Texas, 59 Fed. (2d) 750, and Thompson *v.* Consolidated

Gas Utilities Co., 300 55, 81 L. Ed. 510, as being decisive thereof, In disposing of this contention, this Court held that:

> "Where a foreign corporation obtains permission to do business within the State of Oklahoma, and pursuant to such permission enters the state and produces and transports natural gas therein, it may not successfully contend that a statute, relating to its operations, in full force and effect at the time it obtained permission to do business within the state is unconstitutional, and that an order of the Corporation Commission made pursuant to authority granted by such statute is void."

As we construe the holding of this Court herein, it is that even though the state statute and the order of the Commission based thereon and appealed from in this case violates the rights of plaintiff in error guaranteed under the Federal Constitution, this plaintiff in error cannot raise such questions because the statute was enacted before plaintiff in error entered the state. In the two cases last cited above it so happened that the corporations entered the state before the enactment of the statute and the opinion herein concludes that such fact distinguishes those cases from the case at bar and makes them inapplicable. We respectfully submit that in so holding, this Court overlooked and failed to give effect to the rule well settled by more recent decisions of the Supreme Court of the United States:

> "* * * that a foreign corporation by seeking and obtaining permission to do business in a State does not thereby become obligated to comply with or estopped from objecting to any provision in the state statutes which is in conflict with the Constitution of the United States." Power Co. *v.* Saunders, 274 U. S. 490, 497.

Among other cases so holding are:

Hanover Insurance Co. v. *Harding* 272 U. S. 494, 507;
Frost Trucking Co. v. *Railroad Commission of California*, 271 U. S. 583, 594;
Connecticut General Life Ins. Co. v. *Johnson*, 303 U. S. 77, 82 L. Ed. 673;

Canadian Pacific Railway Co. v. *Sullivan*, 126 Fed. (2d) 433 (1942);
Phillips Petroleum Co. v. *Jenkins*, 297 U. S. 629, and

Quaker City Cab Co. *v.* Pennsylvania 277 U. S. 389, 400, 401, 48 L. Ed. 927, wherein the Supreme Court of the United States says:

> "It is established that a corporation, by seeking and obtaining permission to do business in a state, does not thereby become bound to comply with, or estopped from objecting to the enforcement of its enactments that conflict with the Constitution of the United States."

In Phillips Petroleum Co. *v.* Jenkins, supra, the Supreme Court of the United States said:

> "Arkansas might have refrained from enactment of statutes creating or authorizing organization of corporations and might have denied to foreign corporations admission to the State. But it may not enforce any part of the charter of a domestic corporation or any provision of its laws relating to admission of a foreign corporation that is repugnant to the Federal Constitution. If § 7137 is repugnant to the equal protection clause, it is without force as a part of the charter contract or otherwise."

All of the foregoing cases were decided subsequent to the case of Pierce Oil Corporation *v.* Phoenix Refining Co., 259 U. S. 125, 66 L. Ed. 855, upon which this Court based its decision. If the Pierce case is not distinguishable from the later cases, it is in conflict therewith and must fall. However, we think it is clearly distinguishable in several respects. As was said by the Supreme Court of the United States with reference to the facts in the Pierce Case, the Oklahoma Constitution provides for a Corporation Commission with large powers of regulation and supervision over oil pipe and other transportation companies and that in 1909 there were enacted various statutes (now found in Title 52, Chapter 2, O. S. 1941) applicable to oil pipe lines. It is provided in said statutes that no corporation, except

as authorized therein, should have the right to engage in the business of transporting crude petroleum through pipe lines within the State, and that every corporation engaged in such business under the state law should be deemed a common carrier thereof, as at common law. These statutes also provide that before any corporation should be entitled to the provisions of the Act, it must file with the Corporation Commission an authorized acceptance of the provisions of the statutes and the Constitution of the State, and a plat showing the location and capacity of the company's pipe line (Similar statutes governing gas pipe lines are found in Title 52, Chapter 1, O. S. 1941).

The facts in the case further show that the Pierce Company had not only transported its own oil from the Cushing oil field to its refinery at Sand Springs, but had also transported oil for various other parties for hire, and had at one time procured from the Corporation Commission temporary exemption from its duties as a common carrier, pursuant to one of the provisions of the statute. The Republic Natural Gas Company, as shown by the record, and as set forth in the opinion of this Court, has never been a common carrier or a common purchaser of gas, It did not enter the State of Oklahoma as a pipe line company, and has never conducted its business as such by accepting the provisions of the above statute, nor exercised the privileges therein granted. It has simply carried on its business as a producer of gas with its necessary gathering lines wholly located within the gas field, and it has never accepted any privilege or benefit whatever under the Act of 1913.

The order of the Commission, based upon the 1913 Act, applied and attempted to be enforced against plaintiff in error in this case was made long after Republic Natural Gas Company entered the State. Therefore, the order of the Commission was the subsequent enactment of a law within the meaning of the Federal Constitution. Moreover, as held in Connecticut General Life Insurance Co. *v.* Johnson, supra:

> "A corporation which is allowed to come into a state and there carry on its business may claim, as an indi-

vidual may claim, the protection of the Fourteenth Amendment against a subsequent application to it of state law."

We respectfully submit that this Court should enter its order granting the rehearing herein, and upon rehearing should reverse the order of the Commission.

Respectfully submitted,

RAINEY, FLYNN, GREEN AND ANDERSON,
735 First National Building,
Oklahoma City, Oklahoma;
ROBERT G. FOULSTON,
GEORGE SIEFKIN,
Wichita, Kansas,
Attorneys for Plaintiff in Error.

ROSS RIZLEY,
Guymon, Oklahoma,
Of Counsel.

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